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Soviet Legal Reform Instituting a State of Law [REDACTED]

A Research Study



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FEB 2000

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[80V 89-10061X]
July 1989

Soviet Legal Reform: Instituting a State of Law [REDACTED]

Key Judgments

General Secretary Gorbachev has called for significant change to strengthen "socialist legality" in the USSR, which he believes is key to guaranteeing the durability of his political, economic, and social reforms. The first lawyer to lead the USSR since Lenin, Gorbachev says he wants to create a "state of law" in which no official is above the law and all citizens are protected by it. He has criticized party interference in the administration of justice and implicitly renounced the traditional Soviet view of law as an instrument of social control and repression. [REDACTED]

Despite Gorbachev's professed determination, Soviet legal reform is still at an early stage and its future is uncertain. Continuing leadership interest in maintaining the domination of the Communist Party--which Gorbachev shares--constitutes a strong barrier to the creation of a legal system that operates independently of political pressure. The regime is wrestling with the problem of trying to maintain its ultimate authority while preventing government arbitrariness and protecting individual rights. The creation of a "state of law" in the USSR may remain beyond the reach of this generation, but modest changes already made and others that are under consideration could be important first steps in reducing regime coercion and strengthening civil liberties. [REDACTED]

Gorbachev has several motives for pushing legal reform. Eliminating corruption builds regime legitimacy and effectiveness and strengthens popular respect for law and order. Overhauling the regulatory process, which is handicapped by ambiguous and often contradictory laws, improves the likelihood of consistent enforcement of reform laws. Engendering public trust in the predictability of the law and confidence that economic and civil rights provided in the law will not be ignored encourages private initiative. Supplanting the notion of a totalitarian regime with one of a country ruled by law improves the USSR's image abroad. [REDACTED]

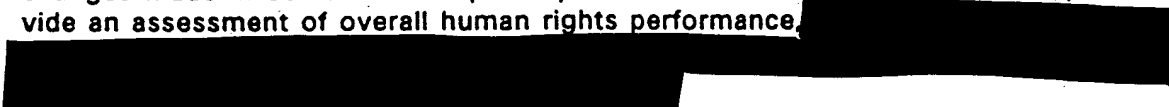
Accordingly, Gorbachev has taken steps to remove corrupt party and law enforcement officials and to prosecute some of the worst offenders. Laws have been passed to protect the rights of whistleblowers who uncover official abuses, to regulate psychiatric commitments, to give citizens the right to sue officials, and to increase the rights of economic enterprises and private businesses. So far, however, implementation of the new laws has been uneven. [REDACTED]

[REDACTED]
June 1989 was used in this study. [REDACTED]

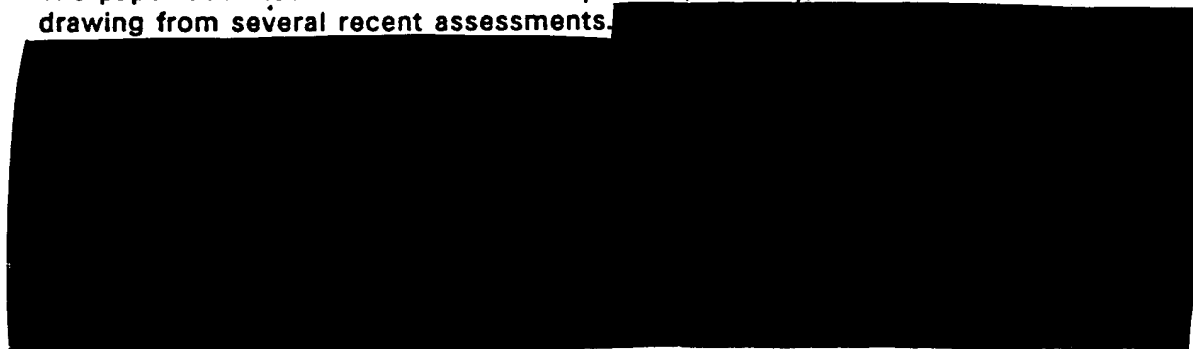
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Scope Note

This study provides an overview of the Soviet legal reform effort, including what the regime is trying to address and why, actions it has taken and proposed, and the hurdles it is already beginning to confront. It does not attempt to track all the changes made in Soviet law--especially on the economic side. Nor does it provide an assessment of overall human rights performance.



The paper does touch on several other political, security, and economic issues, drawing from several recent assessments.



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Summary

The Situation Gorbachev Inherited

When Mikhail Gorbachev became General Secretary, the content and application of Soviet law were dependent, to a large degree, on political considerations:

- Certain groups and categories of activity were not protected by the law. People deemed "troublemakers" often found themselves in conflict with the authorities and without even the minimal due process guarantees accorded to common criminals. Existing constitutional rights were ignored when activities threatened social control or party privilege.
- Other groups, such as party and government officials, received special treatment and were in many respects above the law. High standards embodied in party rules were subverted by widespread protectionism. Abuse existed at all levels.
- Communist Party control of legal institutions and officials--through party oversight bodies and the appointment of legal officials--was pervasive. Responsible legal officials often acquiesced to the orders of strong party or ministry officials. Direct intervention in particular cases--referred to even by Soviet officials as "telephone justice"--was common.
- The political police (KGB) had considerable operational independence, were regulated by few legal constraints, and, in the name of internal security requirements, routinely short-circuited those legal and procedural safeguards that did exist.
- In general, officials responsible for the economy and social issues often used the principle that the end justifies the means to rationalize actions that sidestepped laws and regulations. [REDACTED]

Motives for Reform

Publicly acknowledging these gaps between Soviet law in theory and in practice, Gorbachev has several important reasons for pursuing legal reform:

- Building regime legitimacy. Gorbachev wants to curtail official abuses that have a corrosive effect on the regime's reputation. Corruption erodes popular respect for the party, thus robbing it of a source of legitimacy and undermining the credibility of Gorbachev's reform program. Noting that more than 15 percent of all citizen complaints were about the police or the courts, one CPSU official asserted that such perceptions were a "time bomb" under reform.

- Making the system more effective. Arbitrary law enforcement and blatant corruption also threaten to weaken the regime's ability to enforce its policies. Under-the-table dealings strip the leadership of its leverage over local officials by providing them with alternative sources of money and privilege beyond the benefits dispensed by the party. Moreover, policies cannot be enforced effectively if laws and regulations are unpublished, ambiguous, or contradictory.
- Giving new legal footing to the economy. Even if the leadership gets enough support to implement an economic reform, the continued existence of conflicting administrative regulations might still undermine its enforcement. In February 1988, Gorbachev referred obliquely to the problem when he called for assurances that the state enterprise law would be supreme and not be "diluted with all manner of departmental instructions and directives."
- Unfettering initiative. Uniformity and predictability in applying the law encourage initiative among the more outspoken and productive members of society. Before citizens will act and participate in reform--running against a CPSU candidate in an election or opening a cooperative cafe--they must believe that the law provides adequate protection of their rights, trust that the regime will enforce the law, and be assured that secret regulatory procedures do not override the formal legal process.
- Reviving respect for law and order. Gorbachev also wants to reform the legal establishment to keep in check crime and antisocial behavior--threats to a cohesive and disciplined society. Failure by law enforcement organizations to obey the law encourages the public to disregard it as well. Admitting that problems such as violent crime, juvenile delinquency, and drug abuse are on the rise, Gorbachev has decried the neglect of such social ills and the concentration by law enforcement bodies on repression of dissent as using a "cannon to shoot at sparrows, while leaving grave crimes... unsolved."
- ★ Improving the image to the West. Gorbachev is mindful that supplanting the notion of a totalitarian dictatorship with one of a country ruled solely by law and respectful of human rights could have foreign policy payoffs. [REDACTED]

Progress to Date

Like Andropov before him, Gorbachev initially focused on removing corrupt hold-overs of the Brezhnev era and publicizing his intentions to make all officials accountable for violations of the law. He has begun to attack the immunity of party officials from prosecution and has doled out severe penalties to elite offenders, including execution for a handful. In the most celebrated case, Brezhnev's son-in-law, police official Yuriy Churbanov, was recently convicted for bribery in a mas-

sive investigation of a corruption scandal that so far has led to punitive actions against thousands of officials in Uzbekistan and netted a few top officials in other areas as well. [REDACTED]

The regime also intensified cleanup efforts targeted at law enforcement organizations accused of protecting and fostering widespread corruption. No law enforcement body--including the KGB--has escaped high-level personnel changes, large numbers of dismissals, and criminal sanctions:

- In March 1986 Gorbachev appointed Aleksandr Vlasov--a talented regional party official known for his probity--to head the Ministry of Internal Affairs (MVD). Vlasov replaced the police chiefs in several republics and cities, including Moscow, and continued the drive to remove tainted and incompetent staff and improve training. Vadim Bakatin, who replaced Vlasov when he was promoted to Premier of the RSFSR, has emphasized the need to continue Vlasov's policies. Bakatin announced recently that almost 10,000 MVD staffers were punished for law violations in 1988 alone.
- Members at every level of the procuracy, a huge organization that combines the functions of US-style prosecutors and state attorneys, have been charged with protecting and engaging in corruption. In May 1988 the regime appointed Aleksandr Sukharev, former RSFSR Minister of Justice, to replace Aleksandr Rekunkov as USSR Procurator General. Rekunkov, who headed the USSR Procuracy for over seven years, was subsequently implicated in several major corruption scandals still under investigation.
- Judges have been convicted of accepting bribes in return for lenient sentences. [REDACTED] Judges punished for "deviations from the law" totaled nearly 700 in 1987 and about 650 in 1988, according to the Soviet press. In April 1989 the regime announced the retirement of USSR Supreme Court Chairman Vladimir Terebilov, who subsequently was publicly implicated in corruption.
- KGB officials have been publicly chastised for violations such as framing defendants and making illegal arrests. [REDACTED]

Although Gorbachev immediately went after corruption, it was only in late 1986 that he began to set the basis for thorough legal reform by calling for new laws strengthening individual rights. He has advocated an end to party interference in the administration of justice and the creation of a "state of law" in which no official is above the law and all citizens are protected by it. The regime has taken its first steps--though sometimes meager--toward giving citizens and the legal com-

munity the tools necessary to act as whistleblowers and watchdogs against official manipulation of the law to persecute critics:

- The leadership allowed unprecedented press coverage of problems in Soviet psychiatry and sanctioned changes to the law on psychiatric incarceration. These revisions--at least on paper--provide patients with broader and clearer legal rights than in the past. It is still uncertain whether these legal changes will be fully implemented. [REDACTED]

- New laws, effective in 1988, delineate citizens' rights to sue officials who violate their rights and to participate in widespread discussion of public issues and proposed laws--rights promised in the 1977 USSR Constitution. Although symbolically important, the law giving citizens the right to sue officials has several limitations and in practice has had only modest impact. The public discussion law, on the other hand, has contributed to Gorbachev's effort to "democratize" the lawmaking process. The regime used its legal prerogative selectively to initiate public discussion on several draft laws that were major pegs in Gorbachev's reform agenda but avoided public discussion of laws that were potentially embarrassing or disruptive.

- The regime has also moved to protect the new economic rights of enterprises and legalize private business by citizens while cracking down on economic crime and that part of the flourishing "second economy" that remains illegal. Several new laws grant private businesses expanded rights to enter into contracts, engage in foreign trade, and transfer property.

- The regime has granted more power to the quasi-judicial organ tasked with settling disputes among state and private businesses and is trying to identify and remove laws and regulations that are obsolete or inconsistent with the reform laws. The RSFSR Procuracy reported recently that it annulled 38,000 obsolete and contradictory regulations in 1988. [REDACTED]

New Limits on Civil Liberties

Despite these advances, the regime has been struggling to strike a balance between relaxing regime controls and maintaining order amid increasing demonstrations and ethnic violence. [REDACTED]

[REDACTED] Soviet officials have reported deaths and injuries to citizens, including police and innocent bystanders, resulting from demonstrations. While pressing for legal reform to encourage public expression, Gorbachev has been forced or persuaded to take into account the concerns of orthodox Politburo members who argue that lawlessness or anarchy could ensue. [REDACTED]

The regime has used a federal law on demonstrations passed in late July 1988 to narrow the limits on acceptable activity and to legitimize actions to shut down protests. The new law requires citizens to request permission to hold a demonstration 10 days in advance, to inform the local party executive committee of the purpose and location of the demonstration, and to be liable for any material damage to private or public property. Regional authorities are also given the right to pass additional regulations to take into account local conditions. Several republics have instituted large fines and even imprisonment terms of up to six months for violations, while other republics have defiantly refused to enforce the law on demonstrations. [REDACTED]

At the same time, the regime pulled back temporarily from announced plans to overhaul the criminal justice system. Soviet officials had said for over two years that they planned to "humanize" criminal law and to provide more protections against arbitrary state action. Draft federal legislation, published in December 1988, outlined general principles of criminal law and encompassed most of the changes proposed by reformers in the area of punishment. These included a reduction in the use of the death penalty and emphasized work release programs over imprisonment. Officials announced that the draft would be passed by the new Supreme Soviet in mid-1989 and promised further changes to strengthen rights of due process and expression. [REDACTED]

In April 1989, however, the Presidium of the Supreme Soviet issued a controversial decree that stiffened rather than softened laws against dissent and free speech. Although the decree was depicted as a reform document, it actually created the legal means for clamping down on public criticism. [REDACTED]

[REDACTED] At the end of its first session in June, the Congress of People's Deputies repealed the decree's most harmful provision, which made it a crime to insult or discredit state organizations or officials. The rest of the April decree, which remains law, legitimizes regime actions aimed at quelling nationalist and ethnic unrest. Citizens convicted of inciting nationalist dissension, degrading national honor, or discriminating against ethnic groups can be imprisoned for up to three years or fined up to 2,000 rubles. Punishment is stiffened to five years or 5,000 rubles if the actions are combined with violence or committed by officials, and up to 10 years if the actions are committed by a group or involve the loss of life. [REDACTED]

Further Changes Under Consideration

Numerous proposals that would revitalize the reform effort are also under consideration. They are at different stages of preparation, and options ranging from cosmetic to radical are being hotly debated:

- Reformers are attempting to soften further the April decree and are pushing for further criminal law reform, including revision of federal legislation outlining general principles of criminal law and of the more specific criminal code for the Russian Republic. Issues of particular importance include provisions governing the treatment of religious believers, procedural protections such as early involvement by defense attorneys and an increased number of lay judges, and adjustments to make punishment proportional to the crime.
- Laws aimed at increasing judicial independence are expected within the next year. They will build on the framework created by the December 1988 amendments to the USSR Constitution. Key provisions include providing multicandidate elections and new removal procedures for judges, whose terms were lengthened from five to 10 years, and increases in the number of lay judges to create large panels--if not Western-style juries--at least for capital crimes.
- ★ • The regime passed a Constitutional amendment in 1988 to create a Constitutional Oversight Committee that would, for the first time since Stalin's purges, provide some active state oversight of the constitutionality of legislation. The Congress of People's Deputies failed to select members for this oversight committee after disputes arose over the committee's authority to interpret republic constitutions and laws. The Congress appointed a group of Deputies to draft the enabling statute outlining the oversight committee's powers and responsibilities but left the membership question for later. It is also still unclear how much independence from party guidance the committee will have.
- Laws increasing citizens' rights and access to information are said to be in the works, but most are not likely to emerge for several months (see chart). Most important and controversial are laws that define the role of the government vis-a-vis citizens and delineate procedures and standards for review of grievances and charges of wrongdoing.
- Efforts to strengthen legal compliance by law enforcement organizations continue. They focus on establishing new supervisory organs, eliminating unnecessary secrecy, improving competence, and reassuring the public that law enforcement bodies follow the law. MVD officials report that a law on the militia is under preparation. Though not expected before 1990, a draft law on state security will be a key indicator of regime intentions to institute a state of law. Said to be under consideration are far-reaching proposals to eliminate many KGB domestic functions, or at least transfer them to the

MVD, and to create standing committees on state security with broad oversight under the legislature. [REDACTED]

Differences Within the Elite

As in his other reform efforts, Gorbachev is meeting significant political and bureaucratic opposition. The reform battle is twofold: to persuade the leadership to agree on clear and encompassing laws that institutionalize policies, and to see that a resistant bureaucracy implements the laws as written. [REDACTED]

Gorbachev has not had full control of the Politburo nor its complete support for all elements of his legal reform agenda. Legal reform appears to have been slowed by hesitance about delimiting police powers at a time of rising popular unrest. Differences at the top over the laws on glasnost and the media have caused delays of more than two years. [REDACTED]

As in the case of many other reform issues, Politburo members Yegor Ligachev and Viktor Chebrikov are rallying points for orthodox party opposition. Although both clearly support the regime's crackdown on crime and on official corruption--within limits-- they have shown discomfort with such far-reaching Gorbachevian changes as giving citizens access to information and the right to express their views. Chebrikov probably used his influence as head of the Central Committee's Legal Commission to push the April 1989 decree restricting public expression. At the April Central Committee plenum, several hardline officials spoke strongly in favor of keeping the harsh April decree and warned against coddling "criminals" while restricting the powers of the police. [REDACTED]

Gorbachev has attempted--and succeeded in part--to place allies, most notably Vice President Anatoliy Luk'yanov, in a position to counter Chebrikov's influence on matters of legal reform. Luk'yanov and former MVD chief Aleksandr Vlasov--another staunch supporter of legal reform-- rose as a result of the sweeping changes to the leadership in September 1988. Continued support from Vlasov, now Premier of the Russian Republic, would provide great impetus for overall legal reform because Russian law has historically been the model for other republics. Luk'yanov's recent election by the new Congress of People's Deputies as Vice President confirmed his continuing influence. Politburo members Aleksandr Yakovlev and Minister of Foreign Affairs Shevardnadze also support the legal reform effort. Nevertheless, even those in favor of reform have advocated caution in a continued broadening of civil rights when confronted with the upsurge of grassroots political agitation. [REDACTED]

Reform Legislation in the Works

Issue	Status	Key Provisions	Implications
Criminal law and procedure	<p>Newly elected Supreme Soviet will probably vote in 1989 on:</p> <ul style="list-style-type: none"> •Draft "fundamentals" published in December 1988. •Detailed RSFSR code, subject of continued controversy, expected in 1989. 	<p>Revisions will probably:</p> <ul style="list-style-type: none"> •Reduce scope of death penalty. •Shorten prison terms slightly while encouraging work-release programs. •Narrow definition of anti-Soviet and religious crimes. •Expanded role of defense counsel. <p>Whether definition of anti-Soviet crimes will be narrowed as sources indicated prior to setback of April 1989 decree is uncertain.</p>	<p>Contributes to regime aim to improve image in West, especially in light of past widespread human rights abuses and Western attention to criminal law. Gorbachev is balancing "humanization" with regime concerns for maintaining control and public's call for strong law enforcement.</p>
Independence of courts	<p>Gorbachev's proposals endorsed by party conference in June 1988; some enacted in Constitutional amendments that December. Draft laws "On Judicial Administration" and "On Status of Judges" reportedly drafted and under review by Supreme Soviet Presidium. Procuracy said to challenge changes affecting its power.</p>	<p>Amendments provide that:</p> <ul style="list-style-type: none"> •Judicial terms will be lengthened from 5 to 10 years to provide more independence. •All judges will be elected by soviets (councils), yet plans to cut party control over nominations are still unclear. <p>Further changes involve:</p> <ul style="list-style-type: none"> •Number of lay judges (jurors, of sorts) probably will be increased for serious crimes; chances of proposals for creating jury system are not as good. •Toughening penalties for contempt of court and interference likely. 	<p>Has potential to help regime build legitimacy and eliminate injustices--yet dependent on how far it limits party control over judiciary. Public education and training larger legal cadre will take time. Further political reforms necessary for significant progress.</p>
Constitutional review	<p>Constitutional Oversight Committee chartered in December 1988 Constitutional Amendments. In June 1989 Congress of People's Deputies appointed group to draft law on "Constitutional Oversight in the USSR." Republics concerned that new organization could encroach on their rights. Law on "Sublegislation" reportedly being drafted.</p>	<p>New legislature to choose 23-member committee.</p> <p>Has power to suspend--but not annul--laws and regulations that conflict with Constitution or existing law.</p> <p>Some form of registration with central authority for all new regulations is likely.</p>	<p>Given liberal provisions in Constitution, which have been largely ignored in practice, potentially most far-reaching check on arbitrary power that could reduce contradictory administrative regulations and significantly unfetter initiative. Its membership and case record will be indicators of its independence.</p>

Issue	Status	Key Provisions	Implications
Information access	Laws on glasnost, the media and state archive collection reportedly have been through at least one draft. Central Committee rejected media and glasnost drafts in spring 1988, and lack of consensus is causing delays. Early 1989 press reported drafts under CPSU review.	Plan is to increase access to information in state archives and on decisions and activities of state organizations and enterprises. Provisions are to delineate responsibility of the media, rights of government censorship, and means to address illegal withholding of information.	Even new law that institutionalizes glasnost policy as it exists today, with defined procedures and standards to review grievances, would help in unfettering initiative and putting economy on a legal footing. Remains an uphill battle.
Citizens' rights	Several laws in train defining and broadening citizens' rights. Furthest along include drafts on "Voluntary Societies and Informal Groups" and "Freedom of Conscience."	All are to focus on delineating citizens' rights agreed to in Helsinki Accords and formally included in 1977 Constitution and procedures for redressing violations of them. Registration of religious organizations and informal groups still likely to be key in limiting activities. Rights of publication by all of these groups remains unclear.	Gorbachev needs to pass these laws not only to further his social and economic reform plans but to set a pattern for institutionalizing rights and mechanisms for redress. Codification of current policy alone is a step forward.
Compliance of law enforcement organs	[REDACTED]	Still unclear but likely to: • Establish public legal authority of KGB and MVD. • Address rules for secrecy and declassification. Furthest reaching proposals could include reorganizing KGB to remove it from domestic security or creating standing oversight committees in legislature.	Depending on how far laws go to put objective checks on security organizations, they have potential to give citizenry real protection from police abuse. Reformers' aims will most likely be balanced by strong law-and-order concerns.

Even if the leadership is able to transform some of the controversial reform proposals into law, it still faces an uphill battle to force the foot-dragging bureaucracy to enforce and implement them:

- Mirroring the concerns voiced by hardliners in the leadership, local officials have resisted changes that appear to threaten social control. Pointing to heavy injuries and fatalities suffered by police during demonstrations, [REDACTED] stated last fall that "many of our citizens take democracy to mean total license and anarchy." The need to maintain social order has already provided the excuse for not following laws to the letter. Numerous sources have pointed to several instances in which local authorities denied good-faith demonstration requests and harassed activists with administrative penalties.
 - Party and government officials have resisted changes that adversely affect their institutional and personal power and job perquisites. [REDACTED]
 - Local officials, like some members of the leadership, are resisting efforts that would reduce their control over private economic activity. Their reasons are probably both practical and ideological. Some officials, for example, have used a decree on "unearned income" to discourage cooperatives and private enterprise. Many claim that new private businesses, which must often turn to the black market for supplies, and which are often required to pay protection money to corrupt officials, are the root cause of the increase in crime and the growth of the Soviet mafia.
 - Some officials are likely to become frustrated with what they perceive to be contradictory calls from Moscow. Since the rewriting of law has not caught up with economic and social reform efforts, local officials are encouraged to circumvent some laws while chastised for violating others. [REDACTED]
- [REDACTED]
- [REDACTED]

Potential Impact

Gorbachev stands at a critical juncture in the legal reform process, having criticized the old but not yet built the new. The regime must balance its push for legal reform with the need to enact enforceable laws. It needs to avoid removing constraints in a way that would suggest everything is permitted in the name of glasnost and private enterprise while guarding against the kind of constraints that are preferred by orthodox officials and that have become second nature to most in the legal apparatus that Gorbachev inherited. [REDACTED]

Even if the regime makes only moderate headway on legal reform, it will further its goal of improving the USSR's image abroad. The regime gave wide publicity to the release of the draft criminal law fundamentals in December 1988. Revisions such as abolishing exile and banishment--punishments long used against dissidents--and narrowing the death penalty have significant international appeal. Soviet officials have already contrasted their use of the death penalty with US policy, labeling the execution of juvenile convicts in some US states a human rights abuse. Despite the obvious drawbacks in the April 1989 decree on anti-Soviet activities, the regime has highlighted only the most positive sides of the law and flooded the foreign and domestic press with justifications for it. Improvements in the country's image abroad will be short lived, however, if its actions flagrantly violate the law's purported intent. Although the regime's move to "decriminalize" law--using administrative instead of criminal sanctions--sounds more humane, it removes the few due process guarantees defendants have in the criminal process. Reliance on administrative penalties also makes identifying abuses more difficult for Western observers. [REDACTED]

The chances for the regime to write and apply laws in such a way as to revive respect for the law are less certain. Soviet citizens support firm and prompt law enforcement and would favor efforts to improve the competency of the police and the courts, end corruption, and eliminate the worst police abuses of human rights. Changes in sentencing that make punishment fit the crime will be seen by criminologists as an aid in the fight against crime and recidivism. Fairness and universal application of the law by the regime would revive citizens' respect for the law. However, many ordinary citizens are concerned that reforms are straining the social fabric and producing a degree of turmoil that is damaging the country. Hardliners are portraying the recent increases in crime--which legal specialists blame on the relaxation of the antialcohol campaign--as the result of democratization and the "humanizing" of criminal law. The regime may also confront an increasingly uneasy and disgruntled law enforcement sector, which has been asked to eliminate all the country's ills yet told to play by new rules and subjected to pillorying by liberal publicists. [REDACTED]

Using law to unfetter initiative and place the economy on a new legal footing will be a long, step-by-step process dependent on policy development, on how well the new laws are written to encompass the policy, and on the regime's ability to enforce and implement the laws. We expect progress to be spotty. Nevertheless, new laws, even if poorly drafted and handicapped with compromise provisions--like the law giving citizens the right to sue officials--will institutionalize change that has already taken place and allow reformers to progress to the next level. By amending the April decree that had set back reform, the Soviet Government has given citizens slightly better legal protection against arbitrariness than they had before the decree. They will be even better off if other prohibitions are defined more narrowly. [REDACTED]

The interdependence of legal reform and political change makes building legitimacy and improving the system's effectiveness the most problematic of the regime's aims. Gorbachev's campaign against corruption and official abuse of authority has contributed to his overall effort to bring about a rapprochement between the regime and the society. New rules for judicial selections, improvements in law enforcement training, and new due process guarantees--such as providing counsel for criminal defendants during investigations--could further enhance the integrity of the legal system in the eyes of the public. Nevertheless, the regime is wrestling with the contradiction of trying to maintain its ultimate authority while somehow preventing government arbitrariness and protecting individual rights. The party continues to have a key voice in the appointment of personnel in the legal and law enforcement system, the ability to promulgate party decrees that in practice have the force of law, and the constitutional position of being the country's "guiding force." Without broader political reform that effectively limits the party's authority, the regime is unlikely to ensure independent judicial and law enforcement organizations. Similarly, continuation of a large political police force, charged with monitoring dissent and operating in a more or less arbitrary fashion not restricted by strong legal controls, would undermine efforts to build a new foundation for party rule based less on fear and more on support from the population. [REDACTED]

Soviet Legal Reform: Instituting a State of Law

Soviet Law in Perspective

Western scholars have debated for decades whether the Soviet system of maintaining public order is a legal system comparable to other principal systems of the world. On the surface, many aspects of Soviet law resemble Western law. In fact, some institutions--the courts, a legal bar--and procedures that now exist in the Soviet Union were adopted from Western Europe by the czars and continued by the Bolsheviks. For 70 years, Soviet law has dealt with problems common to any Western system--such as employment disputes, inheritance, family problems, personal injuries, distribution of goods, and crime--and has often arrived at solutions similar to those in other countries.

Despite these surface similarities, the Soviet legal system has been uniquely influenced by its roots in non-Western culture and, thus, differs fundamentally from that in the West. Its roots, as one American scholar writes, "are in a Communist political and social system, in a centrally planned economy, and in the historical tradition of Russia, with its Byzantine, Mongol, and Russian Orthodox heritage" Marxist-Leninist theory accounts for the most significant and fundamental difference between the nature and function of law in the USSR and in the West.

The Bolshevik Claim of Legality

"A law is a political measure; it is politics."

--V. I. Lenin (1916)

Law, under Marxist-Leninist theory, is no more than an instrument of the leadership and is not above or independent of politics. When the Bolsheviks took power, they viewed law as a reflection of the economic conditions of a country. Law would eventually fall into disuse as the state "withered away." Under this assumption, they argued for rule by "revolutionary consciousness"--not by written law--and warned against allowing the revolution to be slowed by legal formalities. Although the Liberal Democrats pushed for Western legal concepts as czarist Russia had done a few years previously, the Bolsheviks rejected calls for such a system, in which law would be an impartial standard controlling society and the political leadership alike. This type of legality, they argued, was a bourgeois principle that concealed class antagonisms. Their position was strengthened by Russia's pre-re-

volutionary experience. The country did not have a deep-rooted tradition that allowed law to bind the ruler. Despite periodic flirtation with Western legal precepts, the Russian legal system had existed at the will of the czar. It lacked strong independent legal institutions and concepts of absolute and inalienable rights of man. [REDACTED]

Lenin struggled to harness law, as did subsequent Soviet leaders, and create a mechanism to enforce regime policies without binding the regime itself. Calls were heard for "revolutionary legality" and later for "socialist legality"--theoretically defined as the strict observance of law by officials and citizens alike--when the regime was attempting to establish order and uniformity in the routine functioning of the system. For example, Soviet leaders called strongly for observance of the law as they tried to implement major economic reforms in the early 1920s and again in 1965 and 1973. Nevertheless, the leadership continued to limit the role of law and use it selectively in order to retain maximum flexibility in its own behavior. [REDACTED]

Soviet Law in Theory and Practice

The selective and arbitrary application of Soviet law was at its worst under Stalin. The "inexpedience" of written law became the justification for Stalin and his legal adviser, Andrey Y. Vyshinsky, to ignore existing safeguards. For example, forced collectivization of agriculture and the liquidation of the merchant class were launched in 1929 in violation of existing legislation. Law during Stalin's rule was little more than a means of providing an institutional veneer to a despotic regime. This is best illustrated by the Stalin Constitution passed in 1936, which emphasized the importance of strict enforcement of the law, the independence of judges, and guarantees of civil liberties, such as freedom of speech and the press and rights of assembly. Law enforcement organizations, like the police and the KGB's predecessor, became instruments to enforce harsh penalties and ensure rigid discipline. [REDACTED]

Since Stalin, the authority of law has expanded and the regime's casual subversion of it has declined, but legal formalities continue to take a back seat to political considerations. Under Stalin's tyranny, the Soviet elite found that the weak legal safeguards against official abuse left the party itself unprotected. Under the banner of "socialist legality," Khrushchev openly criticized Vyshinsky's legal theories and encouraged large-scale codification and systemization of legislation. Despite his purported aims to limit abuse of state power and to protect the rights of citizens, significant breaches of legality, such as religious repression, continued. Khrushchev's attempts to rein in the security services, including the execution of security czar Beriya and the firing of several other KGB officials, were political--not legal--measures. They proved ineffective. Corruption and inefficiency grew during Brezhnev's 18-year tenure until illegalities and abuses by officials were common. General Secretary Andropov's anticorruption campaign, which sputtered somewhat during Chernenko's brief rule, resulted in the removal and punishment of

officials in the police, military, republic party and government bureaucracies, and economic organizations.¹ However, these efforts were again primarily coercive and appeared to be targeted at the most flagrant abuses as well as would-be political rivals. Arbitrariness and administrative fiat continued to predominate over law, which had become merely a tool of party officials to stifle criticism and perpetuate their positions. Repression of dissidents, in fact, intensified. [REDACTED]

The legal system under Gorbachev continues to reflect the sporadic and uneven emphasis given to law over the years. Its characteristics include:

- Exclusion of certain groups and categories of activity from protection of the law. People deemed "troublemakers" often find themselves in conflict with the law and without even the minimal due process guarantees accorded common criminals. Constitutional guarantees are ignored to the extent that they threaten social control or party privilege. When activities are deemed "political" or threatening to the state, they receive little protection.
- The exclusion of other groups from application of the law. An unwritten rule restricts government authorities from bringing a criminal suit against a party member until the party approves. Often members of the party elite are subject only to sanctions or other administrative penalties less severe than would result from the appropriate criminal prosecution. High standards embodied in party rules are subverted by widespread protectionism and have been abused at all levels.
- Legal institutions and officials subject to such thorough political control that their decisions and actions often lack integrity. Party interference in criminal and civil cases is common. Judges, nominated for election with party support, often owe their livelihood to local party bosses. Direct intervention in cases--described even by Soviet officials as "telephone justice"--is so common that poorly trained judges often avoid making certain decisions on their own. Judges are afraid to "take responsibility" and acquit the innocent, according to one Soviet critic, and in most cases find the defendant guilty or remand the case for further investigation.
- A political police organization with limited legal constraints. In its drive for political control, the regime has installed significant power in the KGB. Its focus on ends, not means, results in routine short-circuiting of legal and procedural safeguards. Independent supervision or public scrutiny of the security service is rare, because laws outlining the authority and responsibility of the KGB and covering other security issues are classified and inaccessible to the public. [REDACTED]

¹ See DI Intelligence Assessment SOV 85-10145X (Secret NF NC OC), August 1985, The Soviet Anticorruption Campaign: Causes, Consequences, and Prospects. [REDACTED]

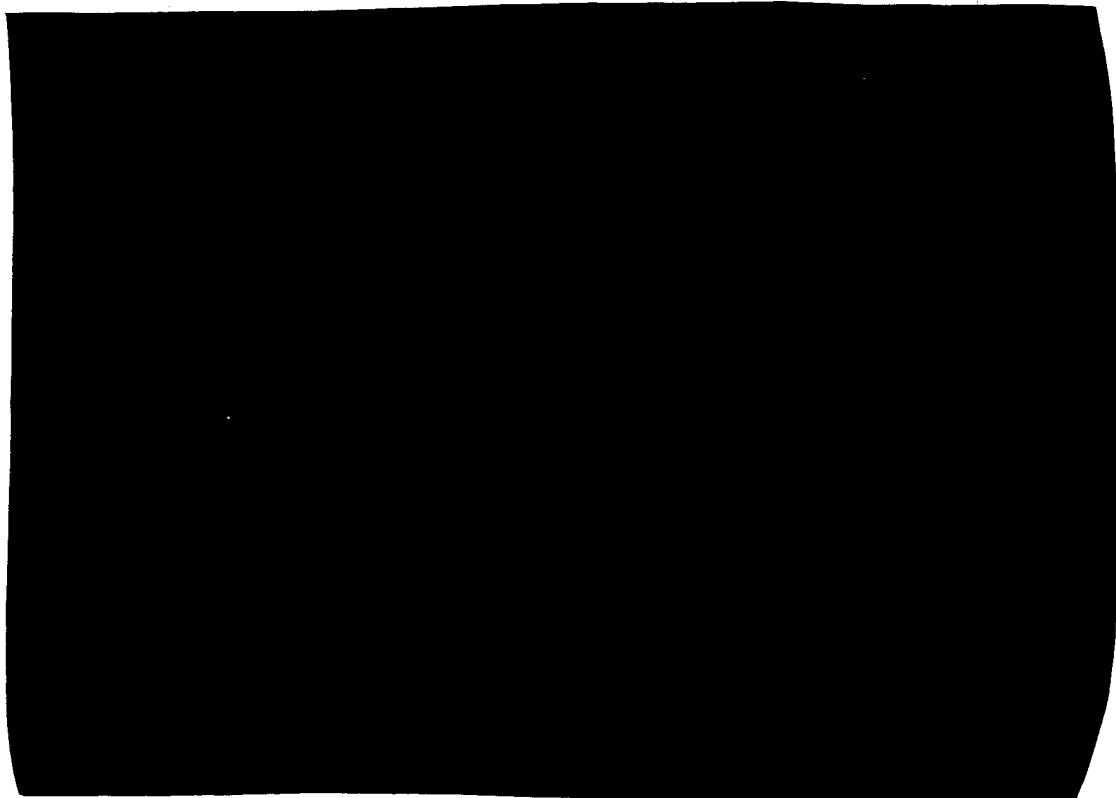
Regime Acknowledgment of Problems

The regime under Gorbachev only gradually acknowledged the miscarriages of justice and due process violations that have been longstanding charges of Soviet legal specialists, dissidents, and Western observers. Party officials report that citizens filed over 100,000 justified complaints on law enforcement organizations, one-third of which were on the criminal investigation process. The national paper Komsomolskaya pravda reports it receives approximately 1,000 complaints each month against the police. The major complaints exposed in the Soviet press include:

- o Judges avoiding acquittals by finding defendants guilty or remanding cases for further investigation. During the 1986 Supreme Court plenum, Chairman Vladimir Terebilov condemned this longstanding practice, charging that it violated the presumption of innocence and was unfair to those who usually remained in custody throughout the reinvestigation.
- o Police officers using excess force and coercion. Several exposes beginning in 1987 publicly confirmed for the first time that law enforcement bodies used brutal beatings and torture tactics on suspects. One article quoted a court official as saying "Who will confess to a crime if you don't beat him?"
- o Performance rating systems that are a disincentive to thorough and objective criminal investigations. In April 1988, a Soviet official criticized the police for abuses such as failing to investigate reported crimes; illegal prosecution, detention, and arrest of citizens; and the falsification of evidence. Critics charge that these abuses are caused by police being evaluated on unrealistically high quotas for arrest (95 percent of criminal cases) and convictions (99.8 percent). This practice, as noted by the recent Izvestiya article "Give Us a Man, and We'll Find a Charge," encourages police to ignore cases unlikely to be solved and to find innocent scapegoats to fill their arrest plans.
- o Improper use of psychiatry. The Soviet press also published a series of articles beginning in mid-1987 that exposed abuses long charged by dissidents and foreign observers, in which sane but troublesome people were placed in psychiatric hospitals. In November 1988, a Moscow psychiatrist supported Western charges that Soviet psychiatry had been used systematically to suppress dissent in the 1970s, writing that law enforcement officials believed that "anyone opposed to anything was, hiddenly or openly, a mental case." [REDACTED]

Gorbachev's Motives in Pressing for a State of Law

In 1987 Gorbachev began to call for a full-scale reform of the legal system and the enforcement of "socialist legality." He has advocated creating a "state of law" in which law applies to officials and citizens equally:



Gorbachev realizes that the present legal system lacks integrity, is frequently ineffective, and is badly in need of improvement. Left unchanged, its arbitrariness will continue to reinforce corruption, alienation, and stagnation. By pursuing legal reform, he can further some of his other reform goals:

- The elimination of arbitrary law enforcement and blatant corruption would build regime legitimacy and the leadership's ability to govern and enforce its policies.
- It would provide a footing for economic and political changes and strengthen their prospects for irreversibility.
- It would create the kind of predictability that encourages initiative among the more outspoken and productive members of society at a time when changes in the social, political, and economic environment are increasing insecurity.

- It would improve the country's image, especially on human rights, in the eyes of the West. [REDACTED]

Gorbachev has recognized the importance of an independent legal system to preserving his political, social, and economic reforms. However, he has not acknowledged how much he is willing to change to achieve such a system. He has avoided commitments on a number of key points, possibly to maintain his political flexibility or because they go beyond his ideological beliefs. He has not argued, as the most radical reformers have, that the checks and balances necessary for a state of law cannot occur in a one-party state. His support for informal groups and pluralism within the CPSU has stopped short of advocating multiple parties or the right to free speech as in the West. He also has not advocated a separation of powers that would allow the judiciary to overrule legislative and executive acts.

Building Regime Legitimacy

From the last few years of Brezhnev's tenure through the present, evidence has increasingly indicated that many segments of the Soviet elite believe corruption and legal incompetence are serious problems at all levels of the system. These problems are seen as adversely affecting the administration of justice, eroding popular concepts of law and order, and raising questions about the party's legitimacy to govern. For example:

- [REDACTED] Officials announced that, despite the decrease in overall crime rates in 1986 and 1987, large-scale economic crime was still a major problem. According to Pravda, over 5,000 bribery cases were exposed in the first half of 1987 and about 122 million rubles were lost by the state through embezzlement.
- In 1986, journalist Arkadiy Vaksburg observed that telephone justice had "not disappeared; it has gathered strength" and that it was eroding the system's legitimacy in the public eye.
- Interviews of Soviet emigres by American scholars indicate that the leaders of the KGB and police are not viewed as very honest. While 57 percent of all respondents stated that all or almost all of the KGB's leaders were competent, only 14 percent judged that all or almost all of them were honest. The local police fared worse, with two-thirds of the respondents finding all or almost all of the police leaders incompetent and 12 percent judging them as honest. [REDACTED]

Making the System More Effective

Arbitrary law enforcement and blatant corruption also threaten to weaken the regime's ability to enforce its policies. Opportunities for lucrative under-the-table dealings weaken regime control over the elite because they provide alternative sources of income and make lower level officials less dependent on privileges bestowed by the party. At a minimum, false economic reporting, padding statistics, black-marketeering, and protecting embezzlers inhibit planning and complicate reform. For example, economic planning is more difficult because some production statistics are inflated, as is social planning because crime statistics have been altered by lower level officials who want to appear to be doing their job. [REDACTED]

The leadership's ability to use law as a weapon to install its policy has been weakened by sporadic and arbitrary enforcement. Low-level officials tend to narrowly focus their work, and, similar to judges, are afraid to uphold the law for its own sake. Surrounded by a myriad of ambiguous, contradictory, and draconian decrees, these administrators tend to enforce only those laws that they must in order to protect themselves and their positions. The police also are ineffective because they are tasked to do more than their resources allow. Gorbachev noted the misdirection of law enforcement organs when he criticized them for using "a cannon to shoot at sparrows, while leaving grave crimes against the interests of our society and citizens unsolved." A party official, noting recently that 15 percent of all citizen complaints to the party were about the police or the courts, opined that the arbitrariness of these legal organizations has become a "time bomb" under Gorbachev's reforms. [REDACTED]

Giving New Legal Footing to the Economy

Such inconsistent enforcement of law is especially threatening to the regime's economic reform policies. While numerous factors contribute to the successful implementation of economic reform, the role of law is twofold:

- The regime must replace the extensive body of law that directed the highly regulated plan-driven economy with law that encompasses fundamental changes. Economic reformers must draft laws that clearly delineate new procedures and rules that will affect their policies--even while the policies are still developing. They must also reeducate the economic bureaucracy as to what law is effective and what is obsolete. After the regime passed its first major set of reform legislation in July 1987, a Ministry of Justice official told a Soviet newspaper that some 15,000 laws and regulations would have to be rewritten to bring them into accordance with the changes.
- The nature of the reform--for example, decreasing central control, increasing the rights of both state and private industry, and emphasizing contracting and negotiation over top-down administrative fiat--requires consistent

and predictable law enforcement. Law is the vehicle to regulate competition, protect the rights and obligations of individual economic players, and redress wrongs. Former principles that held the supremacy of planning norms over the sanctity of a contract must be eliminated for the reforms to succeed. Further development of Soviet civil law, including areas of finance, property, contract, and dispute resolution, is necessary to develop the self-regulating and self-adjusting system envisioned by reformers.

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The regime's decision to pursue legal reform also enhances its potential to harness the benefits of the illegal second economy, another goal of economic reform. Recognizing that the economy's inability to supply citizens with basic goods and services often drives them to break laws, the regime is legalizing certain economic practices and more clearly defining the line between criminal and legitimate acts. By legitimizing the private supply of goods and services, the regime can encourage the Soviet consumer to work harder, can bring this activity into the open where it can be taxed and controlled, and can simultaneously tap the initiative of enterprising entrepreneurs. It can thus eliminate a situation that fosters disrespect for law and law enforcement organs.

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Unfettering Initiative

Encouraging citizens to take the initiative, not only in the economy but also in social and political life, is another reason for legal reform. By the time Gorbachev took power in March 1985, the corruption, party protectionism, and miscarriages of justice that began to flourish under Brezhnev had alienated many members of society and stifled economic and political growth. Consistent application of the law encourages the productive members of society to take initiative and trust that policies will not be reversed. By advocating the adoption of Western-style principles that allow any activity not specifically prohibited by law, Gorbachev hopes to eliminate prohibitive and burdensome regulation.

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The regime, however, recognizes that adopting such an approach would be useless without simultaneously attacking the critical problem of laws and regulations being unavailable and often--sometimes intentionally--contradictory. For 70 years, the authorities have managed the country's economic, social, and political spheres by administrative methods. Hundreds of ministries and other state organs promulgate "sublegislation"--decrees and regulations on acceptable activities and proper procedures. These laws are published selectively, often remaining secret. Mechanisms to systematize and update laws are lacking. Soviet lawyers, students, and private citizens complain that they are unable to find the texts of laws and regulations. One Soviet specialist estimated that about 30 percent of all national-level regulations passed in the 1980s were published in relatively accessible collections of laws, about 12 percent were published in abstract, and the rest were published in official literature or handouts with limited printings. In addition to receiving

Bureaucratic Fiat Above the Law

Soviet jurists argue that bureaucratic arbitrariness is due to the lack of adequate legislative and constitutional review in the legal system. Socialist legal theory has generally rejected US concepts, which give the judiciary power to annul laws passed by the legislature and regulations by the executive branch that violate the Constitution or existing law. Instead, the Soviet system relies on limited review, really "self-control" by the Supreme Soviet (legislature), as formulated in the 1933 "Stalin" Constitution. [REDACTED]

Under current Soviet law, legislative commissions of both chambers of the USSR Supreme Soviet are responsible for preventing the passage of any statute that conflicts with the Constitution or existing federal law, and the Presidium of the USSR Supreme Soviet is authorized to repeal decrees made by the USSR Council of Ministers. The USSR Procuracy may review (but not annul) regulations made by ministries and other state organs. [REDACTED]

History has shown that such legislative "self-control" has been ineffective in preventing the passage of violative laws and regulations:

- o During the five years prior to the Stalin Constitution, when the Soviet judiciary had constitutional review power, it reviewed over 24,000 legal acts, lodged protests against 86 federal acts, and judged 11 republic laws unconstitutional. In 1924 and 1925, the authorities made changes based on the courts' decisions in 77 percent of the cases.
- o Between 1938 and 1969, under the legislative "self-control" that still exists, the Presidium of the Supreme Soviet discovered only 10 violations.
- o In 1988, Supreme Court Chairman Terebilov reported that over 200,000 unpublished contradictory regulations existed and caused many of the unjust convictions reviewed by the courts. [REDACTED]

narrow distribution, the steady stream of sublegislation often contradicts higher law. In the past two years, opponents of Gorbachev's policies have been using sublegislation to undermine efforts at change, particularly economic reform. In February 1988, Gorbachev referred obliquely to the problem when he called for assurances that the state enterprise law would not be "diluted with all manner of departmental instructions and directives." [REDACTED]

Reviving Respect for Law and Order

Gorbachev also appears to believe that reform of the legal establishment will end the problem of keeping common crime and antisocial behavior in check--a threat to a cohesive and disciplined society.² Failure by law enforcement organs to obey the law encourages the public to disregard it as well. When Gorbachev came to power, social problems such as violent crime, juvenile delinquency, recidivism, drug and alcohol abuse, and pornography were on the rise. He recognized the need to encourage public discussion of these previously taboo subjects under his policy of glasnost, while tightening enforcement of laws viewed by the public as socially necessary. In January 1987 Gorbachev observed that "elements of social corrosion that emerged in the last few years had a negative effect on society's morale The spread of alcohol and drug abuse and a rise in crime became indicators of the decline of social mores. Disregard for laws, report-padding, bribe-taking and encouragement of toadyism and adulation had a deleterious influence on the moral atmosphere in society." [REDACTED]

The regime continues to call for legal reform to make laws more effective against crime and to improve the competency of law enforcement organs:

- Soviet officials have recently broken their longtime silence on crime rates and have admitted to a steady increase in most types of crime since 1967. In January 1989, police officials announced that the overall crime rate increased in 1988, breaking a two-year plateau in 1986 and 1987. They report that theft, embezzlement, moonshining, and black-marketeering are on the rise.
- Soviet criminologists have traced crime problems and juvenile delinquency to alcohol abuse, which by 1985 had reached alarming--possibly critical--dimensions.³ One study found that more than half of all crimes were committed by intoxicated people, including 90 percent of the cases of hooliganism, 80 percent of robberies, and 75 percent of all murders and rapes.
- Officials view increases in recidivism as a failure of society and the legal system. Several Soviet press articles have charged that labor camps (prisons) are poorly run, decrepit, unsanitary, and ignore education and rehabilitation. One author charged camp administrators with a Stalinist "gulag" mentality that does little to resocialize prisoners and creates repeat offenders. Other authors accused officials of using prisons as a source of cheap labor and ignoring existing labor legislation, forcing unwarranted overtime, and allowing unsafe conditions resulting in prisoner deaths. [REDACTED]

² See DI Intelligence Assessment SOV 86-10017X (Secret NF NC OC), April 1986, Domestic Stresses in the USSR. [REDACTED]

³ See DI Research Paper SOV 86-10019X (Secret NF NC OC), April 1986, Gorbachev's Campaign Against Alcohol. [REDACTED]

Improving Image in the West

In addition to pursuing the domestic benefits of legal reform, Gorbachev is trying to improve the USSR's image abroad by supplanting the notion of a totalitarian dictatorship with one of a country ruled solely by law and not subject to the arbitrary whim of an authoritarian regime.⁴ This new image could have multiple foreign policy payoffs. The most important would be:

- Stripping the West of its human rights "weapon" by emphasizing the improvement of civil rights and the break from the Stalinist past.
- Encouraging foreign trade and economic cooperation by reducing the risk to foreign companies of doing business in an unpredictable and arbitrary system. *
- Cultivating a less threatening image in the West by moving the USSR closer to the legal practice of Western democracies. [REDACTED]

Progress to Date

Cleaning Up Corruption

Vowing from the outset to remove officials who disregard the law, Gorbachev moved quickly after gaining power to replace large numbers of officials tainted with corruption from the Brezhnev era. Gorbachev's initial focus on this aspect of reform, like that of Andropov before him, probably resulted from the drive's utility in achieving important political aims: discrediting the policies he intended to change, strengthening his position through the power of appointment, and signaling to the public and the elite that he intended to reestablish control from the top.⁵ [REDACTED]

In contrast even to Andropov, Gorbachev has increased the publicity of specific cases and the resulting severe sentences, thus encouraging whistle-blowers and warning the corrupt. [REDACTED]

[REDACTED] The trial of Brezhnev's son-in-law, Yuriy Churbanov, former first deputy chief of the MVD, and eight Uzbek police officials was in the spotlight for nearly four months in late 1988. The Soviet press

⁴ See DI Research Study SOV 88-10006X (Secret NF NC OC), February 1988, USSR: Gorbachev's Policy Toward Dissent and Emigration. [REDACTED]

⁵ See DI Intelligence Assessment SOV 85-10145X (Secret NF NC OC), August 1985, The Soviet Anticorruption Campaign: Causes, Consequences, and Prospects. [REDACTED]

The Unfolding Battle With Corruption

Gorbachev's patron, Yuriy Andropov, was perhaps best known for initiating a relentless anticorruption campaign designed to reverse Brezhnev-era stagnation. Many of the cases have involved huge Mafia-style networks that, according to subsequent Soviet press accounts, created "thousands" of "underground millionaires." These cases resulted in punishments ranging from party censures to long prison terms and even execution:

- o The 24-year rule of republic party boss and candidate Politburo member Sharif Rashidov has been blamed for the widespread corruption in Uzbekistan that involved party, economic, and law enforcement officials. More than 2,600 officials were punished in 1986, including the Minister of the Cotton Processing Industry, who was sentenced to death. Rashidov's successor and the former republic president are currently under arrest awaiting trial for corruption.

- o The regime sentenced seven officials, part of the "Moscow food trade crime ring," in charge of retail trade organizations, to imprisonment terms ranging from eight to 15 years. The national press detailed crimes that included bribe-taking, abuse of office, and embezzlement. It described a network of corruption--implicating former Politburo member and Moscow party boss Viktor Grishin--that had spread throughout the retail trade network over 20 years. The head of the chief Moscow food store was executed in 1984.

- o The USSR Supreme Court convicted a number of officials in the foreign trade network for receiving bribes from foreign businesses and stealing government funds. Those convicted included the former Deputy Minister of Foreign Trade, who was sentenced to 13 years; his wife, a state committee official, who was sentenced to 11 years; his assistant, who received six years; and several members of the foreign trade (construction) combine, Soyuzveshstroyimport, that built the new US Embassy in Moscow.

- o On 30 December 1988, the USSR Supreme Court convicted former police official Yuriy Churbanov and six former high-level Uzbek police officials for bribery amounting to over \$1 million. Churbanov, who married Brezhnev's daughter in 1971, was depicted as an untalented opportunist whose career flourished because of family connections. Sparing all the defendants the death penalty, the court sentenced Churbanov to 12 years imprisonment and six other defendants to prison terms ranging from eight to 10 years. It acquitted one defendant and remanded the case of another for investigation. [REDACTED]

carried numerous articles detailing Churbanov's abuses as well as the "degeneration" that took place in the republic during the Brezhnev years.

[REDACTED]

The regime has intensified efforts that began under Andropov to remove tainted and incompetent personnel from the MVD, described by Gorbachev in 1987 as one of the country's two most corrupt institutions. In March 1986 Gorbachev appointed Aleksandr Vlasov--a talented regional party official known for his probity--to head the MVD. He remained there until October 1988, when he was promoted to Premier of the RSFSR. In his first year, Vlasov replaced the ministers of police in several republics and in Moscow. He pledged to eliminate police abuses and shortcomings by removing incompetents and improving police training. Commenting that only specially qualified and morally irreproachable people should be hired, he stated that the dismissals of over 161,000 police between 1983 and 1985 proved "only to be the start of a large amount of personnel work." According to official statements, the MVD has dismissed an additional 40,000 on corruption charges and for failing the MVD certification process that tests knowledge and professional training. [REDACTED]

New MVD Chief Vadim Bakatin has emphasized the need to continue Vlasov's personnel and training policies. In March 1989, Bakatin said that another 9,900 MVD staffers were punished in 1988 for breaches of socialist legality. He said that it was necessary "to get rid of bullies, downright idlers, and demagogues wearing the uniform." Thousands of employees working at corrective labor camps were also dismissed in 1988 on "moral grounds," according to the MVD official in charge of the camp system. This official told a Soviet newspaper that camp employees who "trample on the law and violate the rights of the condemned" would not be tolerated. [REDACTED]

The campaign has broadened, targeting other law enforcement personnel who, like the police, are being charged with protecting and fostering widespread corruption since the Brezhnev years. Members of the procuracy--a huge organization that combines the functions of US-style prosecutors and state attorneys--and of the judiciary have been publicly chastised, dismissed, and prosecuted:

[REDACTED]

- The Soviet press has implicated former USSR Procurator General Re-
kunkov, removed from his post in May 1988, in several scandals. He
is suspected of involvement in major corruption in the Siberian gold
mining industry, a 1984 coverup of the dismissal of an official whose
corruption investigation was pointing to members of the CPSU Central
Committee, and possible involvement with Churbanov. The authorities
have also initiated several cases against lower level procuracy offi-
cials, including a recent case in which several Rostov Oblast procuracy
personnel were brought to trial for bribery.
- Judges have been convicted of accepting bribes for passing lenient
sentences. In 1986 the authorities reportedly recalled 76 judges for
abuse of office, subjected over 800 to administrative liability, and re-
commended that 22 percent should not stand for reelection. The
number of judges punished for "deviations from the law" totaled near-
ly 700 in 1987 and about 650 in 1988, according to the Soviet press.
USSR Supreme Court Chairman Vladimir Terebilov retired in April 1989.
Subsequently, former procuracy investigators publicly linked him to
corruption. [REDACTED]

Gorbachev has not spared the KGB--sacrosanct throughout the Brezhnev years--
despite its importance to maintaining political stability and the considerable power
it derives from providing security to the Soviet leadership:

- In an unprecedented public statement in Pravda in January 1987, then KGB
Chairman Viktor Chebrikov chastised (and later fired) a KGB official who
"framed" and arrested a journalist investigating official malfeasance in the
Ukraine. Chebrikov pledged that the KGB would act within the law.
- [REDACTED]
- [REDACTED]

Broadening Citizens' Rights

Although Gorbachev immediately pursued corruption, it was only in late 1986 that he established a basis for thorough legal reform by acknowledging the importance of citizens' rights. A November 1986 law on "strengthening socialist legality" and "stepping up protection" for citizens made few concrete changes. However, it called on the party to ensure strict observance of the law, improve legal education, and eliminate shortcomings in law enforcement. The regime called for new laws affecting social and individual rights in its five-year legislative plan passed in September 1986.⁸ Later, at the January 1987 Central Committee plenum, Gorbachev unveiled his "democratization" policy, averring that improved citizens' rights and legal reform were key to the success of his domestic reforms, particularly to unleashing the creativity and enterprise of the Soviet citizen. [REDACTED]

Relaxation of Repression. After the January 1987 plenum, Gorbachev backed his calls to protect citizens' rights with the initiation of significant steps to relax repression of dissident speech and activity:

- The regime released between 600 and 800 political prisoners from jails, psychiatric hospitals, and exile in 1987 and 1988, most of them before serving their full sentences. Those released included members of virtually all political and religious orientations and nationality groups, including all Helsinki human rights monitors, representatives of the free labor movement SMOT, members of the pacifist Group To Establish Trust, and Hare Krishnas.
- Arrests and investigations under criminal laws on anti-Soviet propaganda and agitation have stopped for the most part, although harassment, temporary detentions, and fines against certain individuals—including prominent dissidents—continue. The regime has also discontinued the practice of re-sentencing convicted troublemakers already in labor camps, common during Andropov's and Chernenko's tenures. [REDACTED]

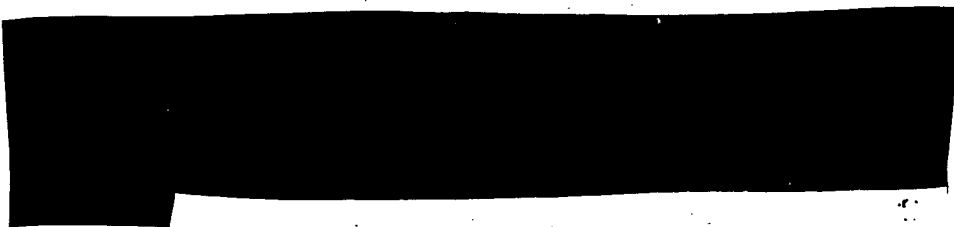
⁸ This legislative plan delineated some 38 bills to be drafted during the 1986-90 period. While most of the proposed draft laws deal with specialized governmental or economic subjects, the agenda lists bills affecting social and individual rights, such as nationwide discussion, judicial appeal against unlawful actions of officials, press information, social development and culture, trade unions, and state security. [REDACTED]


⁹ See DI USSR Review SOV UR 87-010X (Secret NF NC OC), December 1987, "Recent Soviet Human Rights Initiatives: What They Have and Have Not Done." This article is being expanded and updated and will be published as an intelligence assessment. [REDACTED]

Progress on the Psychiatric Front

Soviet organizations got off to a slow start in enforcing new laws on psychiatry. However, evidence is building—including information gleaned through bilateral cooperation on the issue—that psychiatric practices are improving:

- o In a November 1988 interview published in a Soviet periodical, the Ministry of Health's chief psychiatrist Aleksandr Churkin alleged that his organization has taken several steps since the new laws were passed. He said that authorities had reviewed 300 psychiatric cases and had found 18 to be misdiagnosed and had punished an unnamed number of violators of the law regulating psychiatric confinement.
- o Another health official stated in 1987 that commitment guidelines were being drafted and the temporary ones were distributed and were available to patients' families.



- o In November 1988, US and Soviet officials signed an agreement on mutual inspections of psychiatric institutions. It provides for a delegation of American psychiatrists, lawyers, and other experts in forensic psychiatry to conduct interviews "under strict professional standards" of Soviet citizens--chosen by the United States--who were recently committed to mental institutions. In accordance with this agreement a US delegation visited the USSR in March 1989, interviewing patients in and outside Moscow. Although the group's final assessment of Soviet progress was not scheduled to be issued until June 1989, participants reported that most of the Soviet officials involved appeared to be trying to fulfill the agreed requirements. Such cooperation suggests Soviet support from the highest levels.
- o In January 1989, Soviet officials invited British experts to visit psychiatric hospitals in the USSR. A US television crew was also allowed to visit a facility outside Moscow and interview patients and staff. 

Changes in Psychiatric Practices. In a move closely linked to the release of dissidents, but also affecting many nonconformists and "whistle-blowers," Gorbachev also sanctioned major changes in psychiatry.¹⁰ Following Soviet press coverage of abuses, the authorities introduced revisions in the law relating to civil and criminal commitment. The changes, effective 1 March 1988, provide patients--at least on paper--with broader and clearer legal rights than in the past:

- Patients must be told they are dealing with a psychiatrist and, if involuntarily committed, have the right to a review at multiple levels, including by the courts. The Ministry of Health is required to publish its instructions and guidelines for commitment, which in the past were tightly held.
 - Authorities are required to notify a patient's relatives or legal representative of a commitment, addressing a common complaint that patients were found in hospitals only after long searches by their families.
 - Psychiatrists are now criminally liable for hospitalizing people they know to be healthy--with punishment of up to two years imprisonment or corrective labor.
[REDACTED]
 - Institutions for the criminally insane are to be transferred from the jurisdiction of the MVD to the Ministry of Health and a new system devised to separate patients more precisely according to their danger to society and to human life.
[REDACTED]
- [REDACTED]

Activating Dormant Constitutional Rights. In late June 1987, the Supreme Soviet adopted two laws that have the potential to significantly broaden citizens' rights, especially at the local level. One law provides a mechanism for citizens to file a court complaint about unlawful actions of officials, and the other allows wide-spread discussion of public issues and proposed laws. Officials acknowledged that these laws activated two of the many rights that were provided in the 1977 Constitution but were never implemented. Both laws took effect 1 January 1988 and have been used on a limited scale. [REDACTED]

¹⁰ See DI USSR Review SOV UR 88-003X (Secret NF NC OC), February 1988, "Soviets' Shifting Policy Toward Psychiatry." [REDACTED]

Law on Citizens' Right To Sue Officials. Of the two laws, the one establishing the right to sue officials is more significant from a legal standpoint. Highlighted by reformers as a major watershed, it is intended to activate Article 58 of the USSR Constitution. It provides procedures for a citizen to challenge in court unlawful actions committed by officials and to have the action reversed and material losses reimbursed. [REDACTED]

[REDACTED] Although symbolically important, in practice its impact has been modest. The law, as it now stands, has important limitations:

- Most significantly, citizens may bring suit only against actions by individual officials and not actions by "collegial organs"--which predominate in the Soviet bureaucracy. [REDACTED]

[REDACTED] Reform-minded scholars and officials have criticized this provision as providing a loophole for officials wishing to avoid responsibility.

- The law also exempts actions involving the safeguarding of the country's defense capability and state security. This has the potential to provide broad immunity to the KGB, the military, and perhaps the MVD.
- The law says citizens filing frivolous suits found to be slanderous may be prosecuted under existing slander laws. In addition, court costs may be assessed to the defendant who is found to be at fault in the case. Although these restrictions will help prevent unfounded suits, they may also deter citizens who are unable to bear the costs of losing or who fear their suit will not be given a fair hearing. [REDACTED]

Law on Nationwide Discussion. While less important in a narrow legal sense, the public discussion law is a significant part of Gorbachev's effort to "democratize" the system. Implementing Article 48 of the USSR Constitution, which gives citizens the "right to participate in the administration of state and social affairs," the law aims to bring the population into the political process in a controlled fashion. According to the law, the Supreme Soviet or its Presidium decides which national issues and draft laws should be publicly debated and for how long. The press has 10 days to publish information on the issue, and all citizens have the right to submit comments. The comments are summarized and submitted to the Supreme Soviet before the final law is passed. The law is much more specific in detailing what local issues are to be submitted for discussion--although the procedures for carrying this out are less formal. Former Politburo member Andrey Gromyko listed several types of local decisions that should not be handled without the people's advice: construction of housing, schools, hospitals, and factories; demolition of old

Using the New Law on Nationwide Discussion

The Supreme Soviet has selectively used its legal prerogative under the new law to initiate public discussion. The regime instituted formal public discussion procedures for four draft laws--on cooperatives, elections, Constitutional amendments, and fundamentals of criminal law. These were major pegs in Gorbachev's reform agenda and laws that the regime probably believed needed popular support. [REDACTED]

During the discussion of the draft law on cooperatives, authorities reportedly received over 200,000 proposed amendments and suggestions. From the language changes made to the final law, drafters appeared to take into account many of the issues raised in the public debate. Significantly, almost all of the changes incorporated in the final version of the law furthered liberalization. [REDACTED]

Discussion of the draft election law and the Constitutional amendments was more volatile. Officials and popular front leaders in several non-Russian republics strongly opposed provisions that they believed would hinder progress toward regional economic and political sovereignty. After the Estonian legislature declared its "sovereignty," Moscow made changes to nearly half of the draft amendments recommended. Commentators also criticized the debate procedures, arguing that the one month allotted was too little time. [REDACTED]

The draft fundamentals of criminal legislation was subject to about three months of public discussion. Most of the 1,500 recommendations received focused on punishment issues--imprisonment, the death penalty, and acquittals--according to the Soviet press. Many of the letters supported widening the applicability of the death penalty. On the other hand, lawyers from the Baltic republics charged that the draft was a "reflection of the epoch of stagnation" and criticized the fact that republic legal experts were not consulted earlier in the process. [REDACTED]

The regime avoided nationwide discussion on other laws passed in 1988. These included laws regulating public demonstrations, delineating special powers of the MVD Internal Troops, on the Armenian-Azeri dispute over Nagorno-Karabakh, and stiffening punishments for anti-Soviet activities. The authorities probably perceived public examination as embarrassing or threatening to public order. The regime received public criticism when they passed an additional law on cooperatives, seen by most to limit private activity, without public discussion at the end of December 1988. [REDACTED]

buildings; erection of monuments; naming and renaming of cities and streets; and environmental issues. Overall, the law falls short of guaranteeing unrestricted freedom of speech or referendum.¹¹ [REDACTED]

Regulating Economic Activity: A New Frontier

In 1987 the regime began replacing the extensive group of laws governing the existing plan-oriented economy with laws aimed at implementing economic reform. Although still formulating the details of reform, reformers began efforts to decrease central control over the operation of local industries and business, restrict local party interference in economic relations, and give managers and workers greater incentives to improve their performance. They passed several new laws, including the centerpiece state enterprise law and laws on individual labor activity, cooperatives, foreign trade, joint ventures, and arbitration. These laws grant state and private enterprises expanded rights--to contract, engage in foreign trade, and transfer property--to secure their economic independence. [REDACTED]

The new economic reform laws focus on eliminating the overregulation and micromanagement that existed in the plan-oriented economy and replacing it with consistently applied, self-regulating laws. The state enterprise law, for example, increases the rights of enterprises to contract directly with suppliers, rather than funnel their requirements through Moscow, and to manage their own property and finances, even at the risk of bankruptcy.¹² Enterprises also have increased rights in foreign trade and business ventures. These changes mean an increased emphasis on upholding agreements, resolving disputes, and redressing wrongs by contract, property, and other legal principles rather than by administrative fiat. The process of reviewing and revoking obsolete and contradictory laws is continuing. RSFSR officials reported that the procuracy annulled 38,000 regulations in 1988 alone. [REDACTED]

¹¹ The 1986 legislative plan indicated that the law was to be on nationwide discussion and referendum. Proposals for referendum were not discussed widely and were apparently dropped. During the recent elections, candidates for the Congress of People's Deputies, most notably former Moscow party chief Boris Yel'tsin, called for a law on referendum. [REDACTED]

¹² See DI Intelligence Assessment SOV 87-10031 (Confidential NF), May 1987, "Restructuring" the Soviet Workplace: The New State Enterprise Law. [REDACTED]

Gorbachev is also using law to broaden individuals' rights to engage in economic activity while stiffening punishment for those who cross the liberalized boundaries:¹³

- Laws passed in May 1986 and implemented in July 1987 as part of a crack-down on "unearned income" were intended to force the second economy to the surface and thereby reduce corruption, theft, and tax evasion. The decrees set penalties for failure to register businesses and pay taxes. They also called for closer monitoring of individual income by the state.
- The law on "individual labor activity," which went into effect on 1 May 1987, enlarged the range of self-employment, legalizing certain activities that were previously prohibited, such as taxi and trucking services. The law regulates and taxes the activity by requiring permits, license fees, and, in some cases, income taxes.
- Several laws passed since 1987, including the 1988 Law on Cooperative Activity, have amplified earlier laws by allowing groups of individuals to form private businesses that work full-time to provide numerous goods and services. The businesses are regulated by licensing and taxed on their profits. The 1988 law provides a wide range of rights, including rights to hire, set wages, contract, own and transfer property, and engage in foreign trade. A December 1988 decree limits certain types of cooperative activity. The law bans several activities for cooperatives, including many already illegal under criminal law, those obviously aimed at health and safety concerns, and others that clearly threaten state control over the media.¹⁴ The law also defines several activities, like printing, as permissible only in cooperation with state institutions.¹⁵ [REDACTED]

¹³ See DI Intelligence Assessment SOV 87-10064 (Confidential NF), October 1987, Encouraging Private Business: Gorbachev's New Policies Off to a Slow Start. [REDACTED]

¹⁴ Some of the activities prohibited by the new law include the manufacture and sale of narcotics and toxic substances; specialized medical services; wine and vodka production; running gambling establishments; general education; making, exchanging, selling, or showing movies or videos; manufacturing and restoring icons and religious symbols; and cash foreign currency transactions. [REDACTED]

¹⁵ These limited activities include editorial and publishing services; organization of concerts and discotheques; manufacture and sale of records and audio tapes; lecturing; manufacture of duplicating equipment; and organization of joint-venture tourist services. [REDACTED]

Increasing Prominence for Lawyers

Gorbachev is the first lawyer to become the Soviet leader since Lenin. He has emphasized the importance of law and views it as a critical tool to institutionalize his political, economic, and social reforms. But he has acknowledged that simply enacting new laws without developing an understanding and respect for following them would result in failure. [REDACTED]

In the 1950s, Gorbachev studied law at Moscow State University and graduated fourth in his class. Returning to his home in Stavropol' Kray, a major agricultural area, he also acquired a degree in agriculture and worked his way up in the local Komsomol (Young Communist League) and then the party. During 1970-78 he was first secretary of the Stavropol' Kray party committee, and was elected a full member of the CPSU Central Committee in 1971. He has been a deputy to the USSR Supreme Soviet (legislature) since 1970 where he served as chairman of the Commission on Legislative Proposals as well as in other posts. He became a full member of the Politburo in 1980, in charge of party personnel appointments and ideology, before becoming General Secretary in 1985. [REDACTED]

Since Gorbachev has taken power, he has promoted other law-trained officials in policymaking and influential roles:

- o Anatoliy Luk'yanov attended the law faculty of Moscow State University at the same time as Gorbachev and graduated in 1953. Luk'yanov received his Doctor of Law degree in 1980. After holding important executive positions in the Council of Ministers and the Supreme Soviet, he began working in the party apparatus in 1981. [REDACTED]

[REDACTED] In 1987 he became a secretary of the CPSU Central Committee, supervising legal and security affairs. In October 1988 he was elevated to Politburo candidate status and selected as USSR Supreme Soviet first vice president for administrative affairs.

- o Vladimir Kryuchkov, who replaced Viktor Chebrikov as KGB chairman in October 1988, is also a trained lawyer. He received his law degree by correspondence in 1949 and attended the Higher Diplomatic School of the Foreign Ministry from 1952 to 1954. He had longstanding ties to former KGB Chief and General Secretary Yuriy Andropov, working for him in Hungary during the 1956 Hungarian uprising. Kryuchkov had held senior positions in the KGB since 1967, and has probably known Gorbachev since the

late 1970s when both were Andropov proteges. Kryuchkov became chief of the First Chief Directorate in 1974 and was appointed deputy chairman of the KGB in 1978. He accompanied Gorbachev to the Washington summit in 1987, apparently in charge of security. [REDACTED]

Gorbachev places much stock in receiving legal advice from experts--most notably those at the Academy of Sciences Institute of State and Law (ISL) and the Ministry of Justice Institute of Socialist Legislation. Vladimir Kudryavtsev, head of ISL from 1973 to 1989, is a highly respected legal scholar. He has been at the forefront of the legal reform effort and adviser to Gorbachev, accompanying him to the 1987 Washington summit. Last year, Kudryavtsev was made vice president of the Academy of Sciences, a position that gives him strong input into research efforts and directions. Georgiy Shakhnazarov, former ISL section chief and author of several books on law, became aide to Gorbachev in 1988 after serving two years as first deputy chief for the Central Committee department concerned with Soviet Bloc liaison. [REDACTED]

The regime has also highlighted weaknesses in legal organizations that are allowing bureaucrats and enterprise managers to ignore and subvert the new economic reform laws. In June 1987, the party criticized the judiciary for neglecting the "observance of the law in the economic sphere" and directed prosecutors to "switch the emphasis" of their work and ensure that management organizations, enterprises, and other institutions properly execute the law. Economist Leonid Abalkin recently pointed out the importance of the courts to economic reform, saying the USSR needed a legal system in which "the interests of enterprises and work collectives are defended not by journalists but by the law--so that they can effectively defend their own interests in the courts." The procuracy has also received a mandate to improve law enforcement and, as one republic official wrote, "defend the enterprise's rights and interests in every possible way and protect its activity from all kinds of illegal interference and distortions." [REDACTED]

The regime is strengthening the state arbitration system, Gosarbitrazh, made up of tribunals that settle disputes between enterprises. Before a new law on Gosarbitrazh was passed in February 1987, Gosarbitrazh had mandatory jurisdiction only over disputes arising out of planned activity. Changes to arbitration law under Gorbachev have put Gosarbitrazh on a par with ordinary courts and have made it, in theory, the main force interpreting new economic laws and regulations. It is tasked with hearing and settling cases arising from new private activities and from the increased contracting by organizations acting under the state enterprise law. [REDACTED]

Further Changes Under Consideration

During the February 1988 CPSU Central Committee Plenum, Gorbachev reiterated the interdependence of political, legal, and economic reforms and highlighted the increasing urgency of creating a law-based state. Participants at the June party conference confirmed legal reform's increased priority by forming a working commission and making it a central theme in the conference resolutions. At the conference Gorbachev implicitly acknowledged the absence of several fundamental rights and recommended:

- Guarantees to ensure respect for the individual, such as "freedom of speech, the press, conscience, assembly, street processions and demonstrations."
- Guarantees of citizens' personal rights, such as privacy and the confidentiality of correspondence and telephone conversations.
- Protection for law enforcement organizations against outside pressure or interference.
- Improvement in public legal education to support increased activeness.

Several new laws are under consideration that would encompass these rights and institutionalize the policies of glasnost and perestroika, even though recent changes to criminal law appear to pull in the opposite direction. Authorities have announced plans to overhaul the criminal justice system, increase the independence of the courts, raise the status of the bar, eliminate unconstitutional and contradictory law, equip citizens for legal action, and strengthen legal compliance by law enforcement organizations. Most of the work is to be in full swing by mid-1989. New laws passed in April 1989 amid severe nationalist unrest in Georgia have called into question whether reformers have suffered a setback in the first of their efforts aimed at liberalizing criminal law.

Criminal Law Reform: One Step Forward, Two Steps Back?

The regime appeared to take its first step toward overhauling the criminal justice system by publishing draft federal legislation outlining general principles of criminal law in late December 1988.¹⁶ Reformers passed the draft "Fundamentals of Criminal Legislation" and said that changes to several federal and republic laws would also be necessary. At the federal level these include laws on state crimes, on "crimes against the peace and security of mankind"--apparently genocide,

¹⁶ See DI USSR Review SOV UR 89-001X, January 1989, "First Step in Soviet Criminal Law Reform"

aggressive war, and terrorism¹⁷ --on military crimes, on criminal procedure, on corrective labor (corrections), and eventually on administrative law and procedure. These changes will take at least two years, although, as one Soviet academic noted, all of the laws are intertwined and should be completed as soon as possible. Republic law must be kept in conformance with the federal law. The RSFSR Criminal Code will probably serve as a model for other republics. Procurator General Sukharev told Western reporters in February 1988 that over two-thirds of the code would be overhauled, leaving only about 80 articles untouched. While much of this is bound to be technical revision--one major change usually requires language re-drafting in several articles--important substantive revisions are being proposed.

For more than a year authorities spoke with increasing confidence about upcoming changes that would, in their view, "humanize" criminal law. Proposals included new protections against arbitrary repression by the state, procedures to improve the fairness of investigations and trials, and reductions in the severity of punishments.

Protections Against Arbitrary Repression Stalled. Among the most controversial and potentially important proposals under consideration--given their impact on regime stability--are those restricting articles traditionally used to repress Soviet dissidents, religious believers, and other nonconformists. These provisions have been the focus of much attention not only in the West but also among the more politically active sections of the Soviet public.

This new law:

- Maintains broad prohibitions against "anti-Soviet agitation" (Article 70 in the RSFSR Criminal Code), despite claims that these restrictions would be narrowed. The decree improves the old law by repealing the vague provision against "anti-Soviet slander" (Article 190-1 in the RSFSR Criminal Code) and increasing specificity. The decree prohibits public calls for the overthrow of the state and social system or for change that is contrary to the USSR Constitution. However, it also contains a broad category outlawing calls "for obstructing the execution of Soviet laws." This provision negates any advancement against arbitrariness and makes the article much broader than is implied by its title--"Calls for the Overthrow or Change of the Soviet State"

¹⁷ While definitions of these crimes must await the specialized laws mentioned and the republic criminal code, "genocide"--not existing in current law--is mentioned in the new draft criminal fundamentals as an act punishable by 15 years imprisonment. Such an offense is probably aimed at ethnic-related violence that has broken out in the past years, such as the Azeri attack on Armenians in the town of Sumgait in which at least 32 people died.

and Social System." Nor does the law require that calls subject to the law be for the violent overthrow of the system, as proposed by reformers and as specified in Western countries, including the United States.

- Increases regime control over ethnic-related strife. The law expands existing prohibitions against deliberate actions aimed at inciting national or racial enmity or dissension to include actions aimed at degrading national honor and dignity. Harsher punishments are allowed, depending on the severity of the crime. Citizens convicted of inciting nationalist dissension, degrading national honor, or discriminating against ethnic groups can be imprisoned for up to three years or fined up to 2,000 rubles. Punishment is stiffened to five years or 5,000 rubles if the actions are combined with violence or committed by officials, and up to 10 years if the actions are committed by a group or involve the loss of life.
- Protects a few new activities. By requiring the actions to be "public," the law allows criticism of the Soviet system in private conversations or in private writings, in contrast to the former law. Also, the mere possession of anti-Soviet material is no longer a crime, as long as the person does not have the intent to distribute it. [REDACTED]

The April decree also contained a short-lived provision, which made it a crime to publicly insult or discredit state organizations or officials. This provision appeared to have been hastily written and may have been added to the draft in the heat of the moment.¹⁸ Besides the fact that it did not define what constituted an insult, the provision did not require that the intent to discredit the state be present, nor even that the information be false. [REDACTED]

Soviet reformers and legal experts quickly called for amendment of the April decree, which was reportedly railroaded by party hardliners. [REDACTED]

[REDACTED] Institute of State and Law specialists Aleksandr Yakovlev and Boris Kurashvili supported amendment in an interview with a Western journalist. Kurashvili characterized the provision, which made it a crime to insult officials, as unconstitutional. Another well-known Soviet criminal law expert criticized the same provision in Pravda. If we start indicting people for this, he wrote, "it will be necessary to say farewell to glasnost." [REDACTED]

[REDACTED] Criticism of the draft, however, was not unanimous. Several officials at the April Central Committee plenum spoke strongly in favor of keeping the law as it was. Nevertheless, at the end of its first session in June 1989, the Congress of People's Deputies [REDACTED]

¹⁸ See DI USSR Review SOV UR 89-007X (Secret NF NC OC), June 1989, "Changes to the Law on Anti-Soviet Activities: An End to Criminal Law Reform?" [REDACTED]

repealed the decree's provision that made it a crime to insult state officials and organizations. [REDACTED]

The April decree did not affect proposals that have been made to modify the criminal laws under which many religious believers have been sentenced. These changes appear to be targeted at making the law less vague, defining intent, and possibly bringing the law into line with policy changes advocated in the draft law on Freedom of Conscience (detailed in next section):

[REDACTED]

- It also may abolish or significantly narrow Article 227 (RSFSR Criminal Code), which prohibits religious groups from urging citizens not to perform their civic duty and from causing them harm. [REDACTED]

New Procedures To Improve the Fairness of Investigations and Trials.

Although they are less politically charged, fairer court procedures will affect a broader stratum of the populace, including "accidental" dissidents--frequently idealists who inadvertently run afoul of the system. Most reports suggest authorities will redistribute institutional responsibilities over criminal investigations and markedly increase the role of defense counsel.

[REDACTED]

Other officials, however, told the Soviet press in April 1989 that these reforms have been delayed. Officials have said that this change is designed to remove the bias against the defendant caused by the heavy role that the procurator plays in running criminal investigations. Giving power to police at the national level appears to be aimed at preventing local officials from interfering in sensitive cases--as has happened in the past. According to Procurator General Sukharev, the procuracy will retain a general supervisory function and take on investigations in exceptional cases, particularly when law enforcement organizations are involved.

[REDACTED]

In addition to removing the prosecutor from direct control of the investigation, authorities plan to give defendants access to legal counsel during the criminal investigation. Critics charge that the present law allowing counsel only after completion of the investigation prevents any objective check against violations of due process and fosters continued bias. Some reformers have advocated an American-style model giving broad rights to counsel--and "Miranda" warnings of these rights--as soon as a person is taken into custody.

[REDACTED]

Changing Treatment of Religious Believers

[REDACTED]

Reformers are pushing to establish these new realities in law and to provide protections for their continuance. Regime actions have included the following:

- o [REDACTED]
- o Religious organizations and believers have donated millions of rubles as well as goods and services to other charitable causes, including the victims of Chernobyl' and of the recent Armenian earthquake. The board of the newly created Children's Fund even includes ecclesiastical leaders.
- o Soviet officials have begun to return former church buildings and property to religious organizations and to register new religious communities. In a December 1988 interview, Council on Religious Affairs Chairman Konstantin Kharchev stated that since the beginning of 1988 more than 600 religious organizations have opened. The slowest growth has been in Muslim groups. Later he told Afghan officials in publicized talks that this number included 12 Shi'ite mosques in Azerbaijan (to total 29) and another five mosques in the RSFSR. In April 1989, the Soviet press reported that the Council had registered 1,600 new religious congregations in the past year.
- o The regime endorsed and widely publicized celebrations culminating in June 1988 by the Russian Orthodox Church for the Millennium of Christianity in Russia. The Soviet media televised portions of the Russian Orthodox Easter services in Moscow and gave substantial--and favorable--coverage to the Millennium celebrations, including Gorbachev's meetings with a number of Church hierarchs. [REDACTED]
- o Also in connection with the Millennium celebration, Soviet authorities allowed the entry of tens of thousands of Bibles and other religious books in 1987 and 1988. In December 1988, Kharchev stated publicly that 1.2 million Russian and Ukrainian Bibles had been imported into the USSR during 1988. [REDACTED]

[REDACTED]

o [REDACTED]

Only literature of religious sects banned in the USSR would be barred. In March 1988 another customs official told Izvestiya that citizens were allowed to receive such items as Bibles, Korans, and religious relics through the mail. [REDACTED]

However, the regime's actions are limited--directed toward bringing religious believers into the mainstream--and continue to punish and control elements that threaten even a reform-oriented regime. Its treatment of religious groups such as Muslims and the illegal Ukrainian Catholic Church (the so-called "Uniates") still contrasts with that of the Russian Orthodox and Baptist churches, indicating strong regime concern over the former's role in generating nationalism and strengthening external links with foreign coreligionists.

[REDACTED]

[REDACTED]

Other revisions may include stricter procedures and/or requirements for obtaining warrants; for example, having judges instead of the procurator approve them. [REDACTED]

Reducing the Severity of Punishment. In line with Gorbachev's ridicule of Soviet punishment as shooting at sparrows with cannons, authorities have already begun to change laws relating to punishment. Following a sociological study of corrections policy, experts are advocating the separation of first offenders from less dangerous convicts, extending by two years--to age 20--the limit for juvenile offenders to remain in youth detention facilities rather than regular labor camps. They also advocate expanding substantially the use of "colony settlements"--penal villages where convicts must work at assigned jobs but are free of the extreme restrictions of labor camps.

[REDACTED]

[REDACTED]

The draft criminal law fundamentals, published in late December, encompass most of the changes proposed by advocates calling for punishment that better suits the crime and lessens the likelihood of imprisonment. Some of their proposals were watered down or turned aside, however. The draft law includes:

- Reduction of the use of the death penalty. Although some legal scholars favored its complete abolition and a significant segment of the public strongly supported its use, moderate reformers may have won their push to reduce the scope of the death penalty by reserving it for the most serious crimes. Under the draft law, capital crimes include only high treason, espionage, terrorist acts, sabotage, intentional homicide with aggravating circumstances, rape of a minor, and special cases determined by federal law during times of war. Economic crimes would no longer be punishable by death. The draft broadens exemptions, which now includes only minors and pregnant women, to include all persons over 60.

- Adjustment of prison terms. [REDACTED]

The draft limits the term for incarceration in prison alone (but not labor camps) to five years. But authorities retained a maximum 15-year term and, in the case of a commuted death sentence, a 20-year term. In the case of minors, the maximum term for incarceration was dropped from 10 to seven years, despite some calls to limit it to five years.

- Abolition of exile and banishment. While the draft eliminates these punishments, which in the past were often used against malcontents, it apparently defines a new penalty, "limitation of freedom," that could accomplish the same goal by assigning convicts to specific jobs in specific areas for periods up to five years.¹⁹

Though not in the draft fundamentals, other proposals include cutting the number of workdays for prisoners to allow for education time, paying prisoners if they work conscientiously, and eliminating barriers to the hiring of ex-convicts. [REDACTED]

¹⁹ While further analysis must await the publication of the Russian Criminal Code, "limitation of freedom" may in effect--though not technically--be a renaming of the practice, commonly referred to as "khimiya" (chemistry), of sending convicts to fixed places of work. The first victims of this punishment under Nikita Khrushchev were sent to work in the chemical industry; thus, its informal name.

[REDACTED]

Judicial Independence

Gorbachev has emphasized the importance of a judiciary free from outside influence to decide both criminal and civil cases. In his opening speech to the party conference, he said that a major aim of reform was to "restore the Leninist vision of the role of the court in our system of democracy and strictly to observe the principle of the independence of judges and their subordination only to the law." The conference resolution on legal reform affirmed the need to improve the independence of the courts and to implement principles such as the adversarial system, strict observance of the presumption of innocence, and the elimination of the prosecutorial bias. Constitutional amendments affecting the judiciary, passed in December 1988, set up the framework for future legislation aimed at cutting the influence of local officials. [REDACTED]

Additional laws on the independence of the court are being drafted, and their passage is planned for early 1989. Although details are sketchy, two new laws--on "Judicial Administration in the USSR" and on the "Status of Judges in the USSR"--are likely to include proposals made by Gorbachev at the party conference. [REDACTED]

[REDACTED] The laws will probably address these major issues:

- Judicial selection and removal. The new laws will incorporate the Constitutional amendments extending judicial terms from five to 10 years and requiring that all judges be elected by soviets (elected councils) at their respective levels. [REDACTED]

[REDACTED] Some academics have suggested setting professional qualifications for judges, who are not required to have formal legal education.

- Increasing lay judges. The new Constitutional amendments increased the term of lay judges from two and a half to five years. Further proposals have focused on increasing their number (currently two lay judges sit with one professional judge, with decisions being made by majority vote among the three) and giving them more authority. Suggestions have ranged from simply increasing their number to instituting a Western-style or even 19th-century Russian jury system. [REDACTED]

[REDACTED] Soviet academics said defendants will be able to object to a lay judge in the early stages of a case as well as at the pretrial stage as they can now.

- Interference with the courts. Citing the forthcoming law on the "Status of Judges," the Constitutional amendments provide that any interference with the courts is impermissible and entails legal liability. The new law will probably follow Gorbachev's call at the party conference to toughen existing penalties for interference or contempt of court. Some reformers have proposed eliminating protections granted to party members, such as requiring party permission before authorities can formally prosecute a member for a crime, though this has not been publicly endorsed by most officials. As Ogonek editor Vitaliy Korotich stated, "What we have is a vicious circle. People who cannot be made answerable cannot be condemned; and since they have not been condemned they cannot be accused of anything; and so on." One Pravda reader suggested that party membership of one committing a crime ("abuse") should in fact be regarded as an aggravating circumstance resulting in stiffer punishment. [REDACTED]

Raising the Status of the Bar

★ Gorbachev has also endorsed a growing movement within the Soviet legal community to organize attorneys and other legal professionals and to strengthen their role in protecting their clients' rights and interests. The Soviet public generally holds attorneys in low esteem, in large part because of their poor education and limited effectiveness. Advocates complain of overwork, low pay--which results in unpopular demands for unofficial side payments--and being blamed for the system's unenforced procedures and unfair results. In a public discussion last year, a prominent Moscow trial attorney cited cases where lawyers were harassed simply for defending a client, and stated "advocates should not be afraid to protect their clients' rights." [REDACTED]

Leading attorneys have proposed major changes in the organization and role of the bar to improve its ability to function and withstand local party and government pressure. These include the following:

- Creating national organizations for lawyers that would improve information flow, especially in the provinces and smaller cities. Lawyers want to participate in making official legal policy and in drafting legislation. Two national-level organizations have formed, one representing all jurists--academics, lawyers at state enterprises, and trial attorneys--and the other representing only trial lawyers. While the Ministry of Justice appears to have led the formation of the larger group for jurists, the organization of trial lawyers is trying hard to keep its independence from the government. The head of the All-Union Association of (Trial) Lawyers--a deputy director of the Moscow Legal Defense Research Institute--pointed to the incompetence in the Ministry of Justice at all levels as a major reason for forming his organization.
- Raising legal fees to foster better work and to eliminate the illegal payments resulting from the Ministry of Justice's low fee schedule. [REDACTED]

- [REDACTED]
- Increasing the number of lawyers and improving their education to meet the expected increase in demand as the country expands its use of law in the economy and social services. [REDACTED]

[REDACTED] While Moscow's population nearly doubled between 1950 and 1986, the number of lawyers grew only 2 percent. Legal scholars also advocated eliminating law degrees through correspondence schools, arguing that few professionals are taught in the same manner. [REDACTED]

Eliminating Unconstitutional and Contradictory Law

One of Gorbachev's most radical reform suggestions at the party conference--affirmed by the resolutions and the recent Constitutional amendments--is the creation of a constitutional review organization. According to Gorbachev, the organization would "monitor the conformity of our laws and other legal acts with the basic law of the country, and would be allotted sufficient powers for this purpose." The amendments authorize the new Congress of People's Deputies to appoint a 23-member USSR Constitutional Oversight Committee "from among specialists in the sphere of politics and law." Members will serve 10-year terms and are to include representatives from every union republic. The committee will have the power to review and suspend drafts, laws, and "sublegislation" made by federal and republic legislatures, ministries, and other state organs when they contravene higher law. However, it cannot annul these acts like US courts can, but is required to submit them to the originator for action. [REDACTED]

The committee represents a step forward but is less than what some Soviet legal professionals advocated. Its effectiveness will depend to a large extent on its membership, powers, and procedures, which are still unknown. In June 1989 the Congress of People's Deputies failed to select members for the oversight committee after disputes arose over the committee's authority to interpret republic constitutions and laws. The Congress appointed a group of deputies to draft the enabling statute "Constitutional Oversight in the USSR," which will regulate the committee's powers and procedures. The committee's basic structure resembles the Hungarian Constitutional Council, which is the least far-reaching of the three East European models that the Soviets probably reviewed (see inset). The committee also falls short of the proposals of Supreme Court Chairman Terebilov and former Institute of State and Law head Kudryavtsev that the USSR Supreme Court or a special court--not a body under the legislature--should have constitutional

[REDACTED]

Constitutional Review Organizations: East European Models

Beginning in the 1950s, Poland, Hungary, and Yugoslavia evolved away from the Soviet model of legislative "self-control" by creating specialized organizations to review the constitutionality of laws and administrative regulations--a direction the Soviets now appear to be taking. Poland has a Constitutional Tribunal and a Supreme Administrative Court made up of professionals with "distinguished" legal knowledge serving eight-year terms. Yugoslavia has a constitutional court system made up only of judges, also serving eight-year terms. Hungary has a Constitutional Council with members who are legislators--arguably with conflicts of interest--or people "of public life" serving four-year terms. [REDACTED]

These review bodies do not have the power of the US judiciary to annul unconstitutional legislation or hear challenges from individual citizens. Instead, in all three countries, if the review organization finds statutes passed by the legislature unconstitutional or contravening other law, it submits the law to the legislature for amendment. The review bodies of Poland and Yugoslavia can annul administrative regulations that contravene the Constitution or federal law. The Hungarian council can only suspend such regulations. The three countries permit only official organizations to file complaints against a law or administrative order. In an effort to improve the public's role, Poland has recently created a new institution--the state "Ombudsman"--to investigate citizens' complaints. [REDACTED]

In all three countries, these organizations seem most active in evaluating laws relating to the economy as opposed to those affecting civil rights:

- o In Poland, the Supreme Administrative Court heard about 13,000 cases in 1986, and individual citizens succeeded in more than one-third of the cases, according to a Polish lawyer. In one case the court annulled parts of a 1985 decree that had increased repair fees to owners of apartments in state-run houses. [REDACTED]

- o In its first decision in 1985, the Hungarian Constitutional Council suspended a 1978 ministerial decree on liquidating enterprises, holding that the decree violated rights granted to enterprises and cooperatives in the course of reform efforts.

- o According to a Western specialist, Yugoslavian constitutional courts have annulled regulations that violate workers' social and economic rights. [REDACTED]

review responsibilities. Justice Minister Kravstov implicitly rejected these suggestions when he told the Bulgarian press that the committee was definitely not a step toward a "separation of powers." On the other hand, Politburo member Anatoliy Luk'yanov recently told an Italian journalist that he believed the country was on a path toward such a separation. [REDACTED]

In addition to creating the review committee, reformers are proposing new methods to prevent unpublished and contradictory sublegislation from being issued. In early 1988, a procuracy official announced that a new law was being prepared with the aim of eliminating contradictory and illegal regulations. Though details on the draft law are scarce, officials have said it will require all government agencies to register their regulations with the USSR Ministry of Justice and the USSR Procuracy. [REDACTED]

Equipping Citizens for Legal Action

Gorbachev is continuing to link the success of his anticorruption and democratization campaigns with providing citizens sufficient tools to stand up to officials who have traditionally used the legal system to persecute their critics. In addition to calling for better "practical application" of the law giving citizens the right to sue officials, the regime has proposed improving legal education and taking steps to guarantee access to information. Proposed laws that may broaden citizens' rights--for example, in the practice of religion or in forming informal associations--are also being drafted to define individuals' rights vis-a-vis the government and to improve their enforceability. [REDACTED]

Legal Education. Recognizing that most Soviet citizens have inadequate legal knowledge, Gorbachev has called for universal public legal education. The party conference resolution on legal reform called for measures to restructure public legal education "as a uniform statewide and partywide program." Though specifics have yet to be formulated, trade unions are being called upon to organize a general legal education effort that will include lectures, seminars, and legal assistance programs. [REDACTED]

Under his broader policy of glasnost, Gorbachev is encouraging the press to inform and raise the public's political and legal consciousness. Soviet media are dealing more frankly with legal problems, including crime and corruption of the elite. Newspapers are increasingly carrying columns addressing legal issues and have already helped educate the populace on the work of lawyers. [REDACTED]

~~SECRET~~

Institutionalizing Glasnost. In one of the most forceful official statements on the issue, the party conference resolution on glasnost stated that it was "the inalienable right of every citizen" to obtain "full and authentic information that does not represent a state or military secret" on any issue of social life. Reformers are attempting to give citizens this increased access by drafting three new laws--on public access to archives, the press, and glasnost. Because these laws are supposed to define the legal rights of citizens and the media vis-a-vis party and government organizations, they are critical to reform. They "should be one of the guarantees of the irreversibility of perestroika," according to political commentator Fedor Burlatskiy. In part because of their importance, these laws are probably among the most controversial and have already slipped past their deadlines announced in 1986. [REDACTED]

Law on the Press and Information. The draft law covering the media has gone through several drafts. One of them was under review by the Party Ideological Commission, according to a 27 January 1989 TASS report. Numerous sources indicate that the law will regulate operations of the press, television, and radio. It will address issues such as the responsibilities of officials and government organizations, the role of party guidance for the mass media, the status of journalists, regulations for disseminating foreign periodicals, and the status of foreign journalists in the USSR. Late last year, an official at the ensorship organization Glavlit told a foreign newspaper that the new law would set out for the first time the rights and duties of Glavlit, as well as channels of appeal for those whose work is censored. [REDACTED]

Western and Soviet press reports indicate that the latest draft, now under official review, does little to attenuate party control of the press--though controversy reportedly continues and issues will remain uncertain until an official draft is published. [REDACTED]

[REDACTED] A ban on publishing not performed by these government-sponsored organizations is likely to be protested vigorously by reformers and grassroots activists. The issue is probably tied to the draft law regulating voluntary societies and informal groups, which is also being drafted. [REDACTED]

²¹ The December 1988 supplementary law on cooperatives bans cooperatives from making, exchanging, selling, or showing videos or movies, and limits editorial and publishing services to those provided in cooperation with state institutions. [REDACTED]

Law on Glasnost. Several commentators have described the upcoming law--also undergoing several drafts and still unpublished--as providing freedom-of-information obligations and rights for public organizations and for citizens, respectively. In August 1988, Academy of Sciences Vice President Velikhov said that authorities were nearing completion of the new law. According to one of the original drafters, the bill grants citizens the right to obtain information on the decisions and activities of state--though not party--organizations and to freely visit state organizations, inspect data, and receive explanations from officials. It purportedly obligates state organizations to make public their decisions, which in the past have often been secret. The draft, however, excludes from coverage information involving state security, privacy (for example, health records), war propaganda, racial discrimination, and pornography.

[REDACTED]

Further legislation regarding secrecy--for example, that would delineate clear guidelines and procedures for classification and declassification--may also be in the works. Following the party conference, several articles written by academics and even KGB officials appeared in the Soviet press advocating clearly defined regulations on secrecy. While it is unclear whether the Soviets are drafting a separate law on secrets, as advocated by some, the issues may be addressed in the bill on state security currently being drafted (described in the section "Strengthening Legal Compliance by Law Enforcement Organs").

[REDACTED]

Law on State Archive Collection. The draft law, which purportedly is completed, is aimed at continuing the regime effort begun in 1987 to lift the heavy restrictions on access to historical archives.

[REDACTED]

Another commentator publicly complained about the secrecy that has surrounded the draft itself. The bill also may touch on the destruction of archive material--a controversial issue in light of recent official rehabilitations of the victims of Stalin's repression and purges. In 1987 the regime publicly denied charges by unofficial journal editor Sergey Grigor'yants that officials were destroying information on the purges

[REDACTED]

Grigor'yants's charges followed the revelations of a young student of the Moscow Institute of Historical Archives, Dmitriy Yurasov, who told an audience at an official lecture about materials on the purges he found in several Soviet archives.

[REDACTED]

Broadening and Defining Rights of Citizens. The regime is developing other laws to implement its social and economic reform policies that are to provide citizens with new rights and ensure their enforceability. Drafters are focusing on delineating these rights and establishing clear and generally accepted procedures for addressing grievances. Some proposals, such as Gorbachev's call at the party conference for privacy guarantees and the confidentiality of mail and phone communications, have yet to be elaborated.

[REDACTED]

Freedom of Conscience. Gorbachev has called for a new law to institute the regime's more tolerant policy toward religion, attempting to gain support for his broader economic and social revitalization programs from religious believers and especially from the Christian community.^{2 2} The new law will replace the draconian 1929 Law on Religious Associations, much of which, officials claim, is no longer enforced.

[REDACTED]

- Giving registered churches the status of legal entities, thereby granting rights and obligations such as engaging in contracts and litigation.
- [REDACTED]

- Defining the limits of religious education.
- [REDACTED]

Several officials have confirmed that the draft will allow limited private instruction for children. While private church schools for children would not be permitted, parents would be allowed to invite a priest to their home to teach their own children privately.

- Other proposals that include sanctioning more publishing activity of religious organizations, allowing international links and economic activity, providing judicial review of disputes between religious societies and local authority, and obliging state institutions to supply religious organizations with material resources.
- [REDACTED]

^{2 2} See DI Research Study SOV 88-10028X (Secret NF NC OC), May 1988, Gorbachev Confronts the Challenge of Christianity or its Executive Summary, SOV 88-10027 (Confidential NF).

[REDACTED]

Voluntary Societies and Informal Groups. Reformers have been calling for a law to establish the rights and responsibilities of nongovernmental organizations, including the growing number of informal groups, which now number over 40,000.²³ A new law is sorely needed to protect new groups from "the heavy hand of government," according to one Soviet official. [REDACTED]

[REDACTED] Soviet press sources have reported that the legislature was to begin work on the draft as well as on another entitled "Organs of Independent Societies and Other Self-Organized Associations" in April 1989. [REDACTED]

A version obtained in February 1988 by a Western newspaper--possibly the version that was rejected--would not markedly improve the status and protections of these groups. It requires official registration for all such organizations, restricts approval to those which are "socially useful" and "in accordance with the goals of Communist construction," and requires burdensome procedures, such as having membership dues approved by the Ministry of Finance. Soviet reviewers (probably of the same version) also added that it failed to define clearly the organizations covered, did not grant them crucial political rights such as initiating legislation and nominating candidate deputies, and omitted special sections on economic and publishing activities. It is unclear if a revised draft will be more liberal than its predecessor. In the case of the Estonian Popular Front, however, the group has been formally registered and allowed to run candidates for Soviet elections. [REDACTED]

Economic Rights. The regime is developing several laws to expand the economic rights of citizens--an issue of significance for Gorbachev's handling of the growing drive for autonomy by local leaders and nationalist groups. In response to the recent surge of national self-consciousness and political activism, Moscow has agreed to significantly expand republic economic rights while drawing the line at separatist views.²⁴ These draft laws are aimed at closing loopholes in existing economic reform legislation and introducing measures to encourage private initiative. These measures include expanding agricultural reforms that grant broader property rights to farmers; giving local authorities more control over planning, resource allocation at the expense of the center, and revenue; and continuing the effort begun two years ago to increase foreign trade rights and activities--including possibly creating special trade zones throughout the country. One bill--on local self-government and local economy--endorsed by Gorbachev in January 1989 is intended to give local soviets access to steady sources of revenue from all area enterprises through long-term regulations, power to raise revenue through taxation of the

²³ A DI Intelligence Assessment entitled Soviet Informal Groups: The Potential for Political Opposition is in preparation. [REDACTED]

²⁴ See DI USSR Review SOV UR 88-011X (Secret NF NC PR OC), October 1988, "Baltic Drive for Autonomy Growing Stronger." [REDACTED]

local population, and legal guarantees of being allowed to spend their revenues independently.²⁵

Strengthening Legal Compliance by Law Enforcement Organizations

Undoubtedly recognizing that competent and law-abiding law enforcement bodies are critical to control corruption, protect civil rights, and engender popular support, Gorbachev has continued efforts to improve their compliance with the law, particularly that of the KGB and MVD. This reform appears to include four significant aspects: establishing new supervisory bodies, eliminating unnecessary secrecy, improving competence, and reassuring the public that law enforcement organizations are under control, preventing their overreaction to citizens exercising new-found political rights.²⁶

Within the past year, the regime has permitted public calls for improved supervision over the security services under a more strictly applied rule of law and has supported the creation of high-level supervisory organs. A letter in a proreform weekly argued for tighter control over the security services by pointing out that the party's loss of control in the past "led to arbitrariness and lawlessness in their work, which produced such sad consequences." In June a Soviet journalist with ties to Gorbachev publicly called for "public control" of the KGB, the MVD, and the military through the creation of a Supreme Soviet commission.

Such legislative oversight, if effective, would break the practice of the KGB's simply taking orders from the party and would broaden the circle of control to include representatives of the people. The simultaneous reform of the Supreme Soviet's nomination process might lead to the election of some reformers like Andrey Sakharov, who have called for tight controls and an end to human rights abuses.²⁷

In the fall of 1988, the party created a new supervisory body--a CPSU Central Committee commission headed by Politburo member and former KGB chief Chebrikov--to parallel the forthcoming Supreme Soviet body. This commission is dominated by representatives from the key institutions involved--MVD, Ministry of Justice, Supreme Court, and KGB--and by orthodox party officials with little legal

²⁵ A DI Intelligence Assessment entitled Gorbachev's Challenge: Restructuring the Party's Role in the Economy is in preparation.

²⁶ See forthcoming DI Intelligence Assessment entitled Gorbachev and the Restructuring of the Soviet Security Apparatus.

²⁷ A DI Intelligence Assessment on the restructuring of the Supreme Soviet is in preparation.

background. Nevertheless, it may still contribute to greater oversight of the old Administrative Organs Department--now renamed the Legal Affairs Department--possibly reducing its cozy relations with the security organizations (see table 1). The absence of Gorbachev adviser Georgiy Shakhnazarov, a jurist by training, remains unexplained. [REDACTED] ★

A second key facet of the reform--pushed by Gorbachev and apparently supported by some law enforcement officials--is removing unnecessary secrecy. For Gorbachev's purposes, increasing the public's knowledge of law enforcement's responsibilities and limits will strengthen the public's role as a check against abuse. Removing secrecy also provides a source of legitimacy--a cause in which law enforcers also have an interest. In mid-1988, then KGB Chief Chebrikov admitted publicly that in some cases secrecy should be reduced. Soon thereafter, several letters and articles by local KGB officials--including a department head of a KGB research institute, Vladimir Rubanov--called for reducing the levels of secrecy in law enforcement and political life. Rubanov, for example, charged that excessive secrecy in the USSR has produced abuse of power, crippled scholarship, and left citizens ignorant of basic information about their own country. [REDACTED]

Evidence suggests that the regime is taking action to spell out publicly the legal authority of law enforcement organizations in the Soviet political system:

- In July 1988, the regime passed a decree that defined the authority of the MVD Internal Troops to use firearms against demonstrators, make arrests, search homes without warrants, perform spot identity checks, and cordon off areas of unrest. While the decree does not change the role or mission of the Internal Troops, it does delineate publicly their authority for the first time since their creation 70 years ago.
- Shortly before the party conference, the KGB called on the party to speed up the drafting of a law "on security," slated in 1986 for completion in 1990. [REDACTED] According to one legal specialist, it provides mechanisms to safeguard against flagrant abuses by the KGB while placing the KGB on a firm legal foundation--without necessarily decreasing its power and functions. The bill may also address general rules for secrecy and classification that would supplement the bill on glasnost.
- A law on the militia is also under preparation and is to be adopted in 1989, according to MVD head Bakatin. During a television program in March 1989, Bakatin said the law would define the rights and obligations of the police. A legal expert at an MVD research institute mentioned in a February 1989 interview with Moscow News that the law was in preparation, yet noted that the general public had not had any input in its preparation. [REDACTED]

Table 1

Key Members of the Party Commission on Legal Policy

<u>Member</u>	<u>Post</u>	<u>Remarks</u>
V. M. Chebrikov	Chairman	Concerned about growing unrest, strong on law and order
✓ V. V. Bakatin	<u>Chief, MVD</u>	Apparent reform supporter, strong on law and order
V. I. Terebilov	<u>Former chairman, Supreme Court</u>	Publicly endorsed legal reform but appears uninfluential
B. V. Kravtsov	<u>Minister of Justice</u>	Publicly supported legal reform and further openness
F. D. Bobkov	First Deputy Chairman, KGB	Once protege of Chebrikov, may share similar concerns
Yu. P. Batalin	Deputy Chairman, USSR Council of Ministers	Probably most concerned with socioeconomic dimension of reforms
A. A. Logunov	Vice President, USSR Academy of Sciences	Purported conservative, Moscow State University Rector
N. F. Rubtsov	Chief of Secretariat, Supreme Soviet Presidium	Possibly Luk'yanov's man on commission
A. D. Ligichev	Chief, Main Political Directorate, Soviet Army and Navy	Shares military concerns over unrest
A. A. Khomyankov	First Secretary, Saratov Obkom	Posted in 1985 to help root out corruption; has been harshly criticized in press
A. K. Brazauskas	First Secretary, Lithuanian Central Committee	One of most reform-minded regional party leaders
K. Makhkamov	First Secretary, Tadzhik Central Committee	Publicly critical of <u>glasnost</u>

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Table 1 (continued)
Key Members of the Party Commission on Legal Policy

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<u>Member</u>	<u>Post</u>	<u>Remarks</u>
L. F. Bobykin	First Secretary, Sverdlovsk Obkom	Denounced supporters of reformer Yel'tsin at party conference
A. N. Girenko	First Secretary, Crimean Obkom (Ukraine)	Probably concerned over nationalist activism, given Tartar demands
V. P. Mysnichenko	First Secretary, Khar'kov Obkom (Ukraine)	Apparent reformer, but heads region accused of widespread corruption
V. Zatvornitskiy	Head, Moscow Main Construction Committee	Strong critic of Yel'tsin

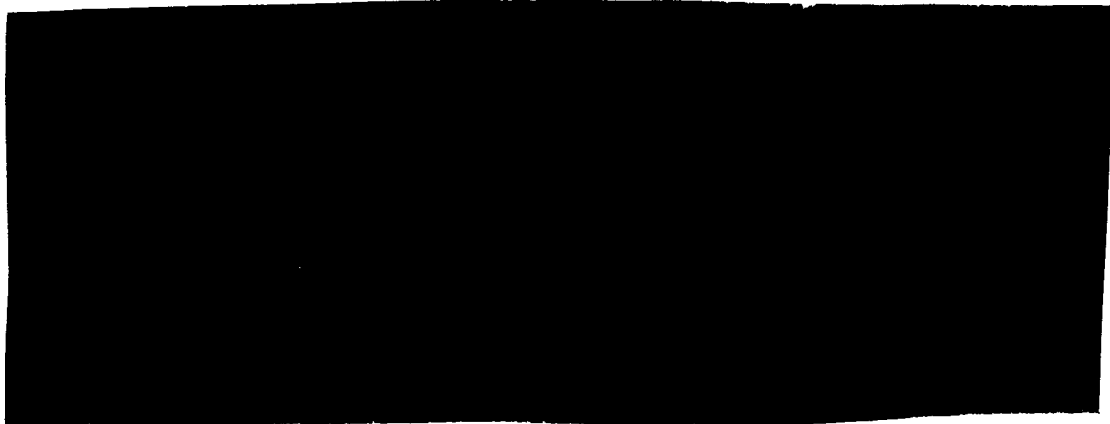
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[REDACTED]

[REDACTED]

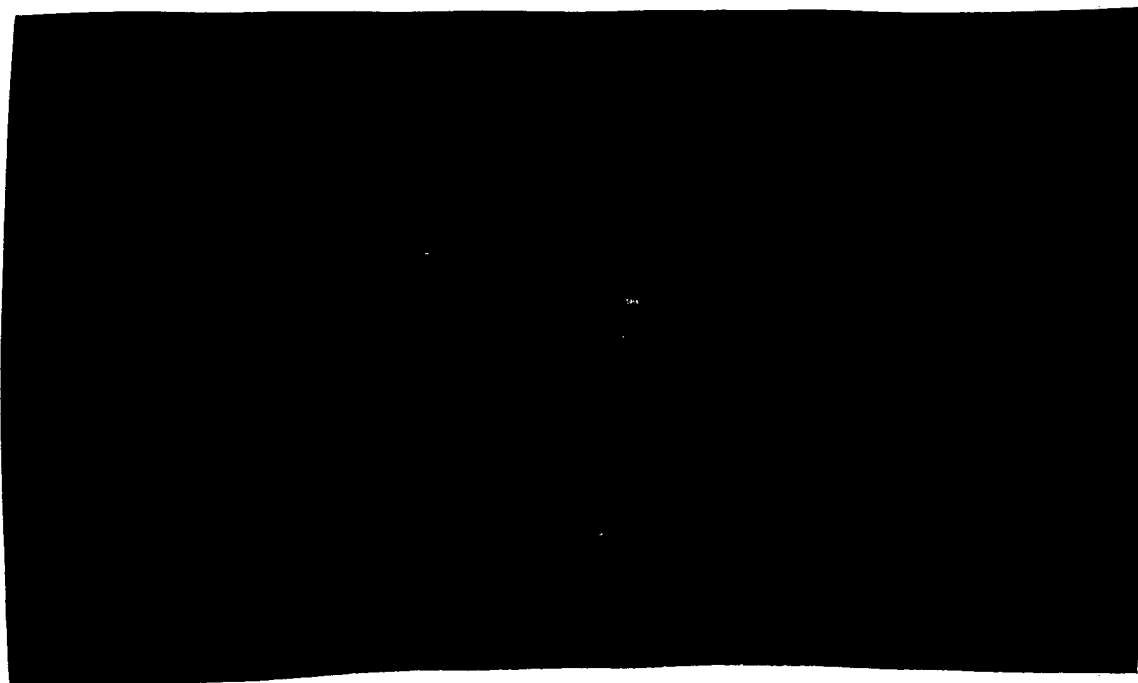
A police official publicly
stated in April 1989 that parts of the central MVD apparatus--with "man-
agement and economic functions"--were being cut by 15 percent.

- Several articles have implied that the huge network of informers and police
operatives succeeded only in repressing patriotic citizens interested in im-
proving the country while turning a blind eye to blatant corruption and
bribery. [REDACTED]



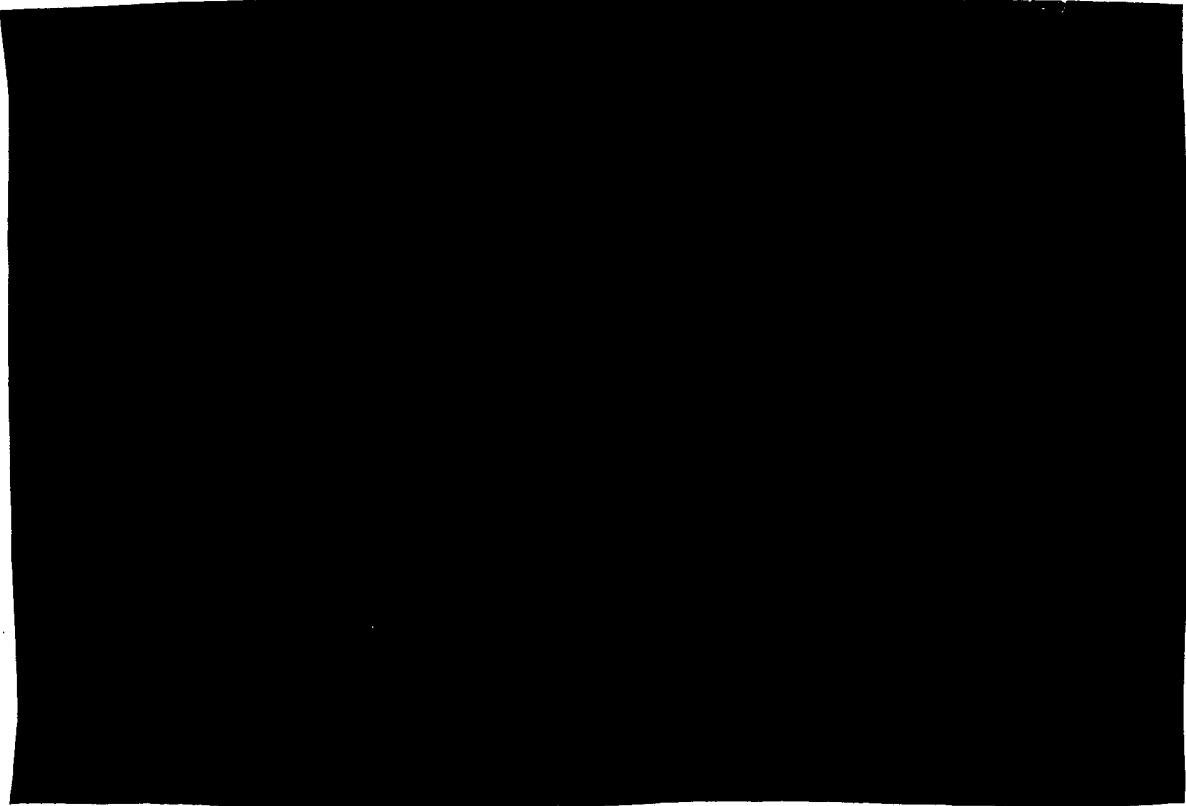

Fourth, the regime is making a concerted effort to reassure the public that law enforcement organizations are under control and will not again become the organs of repression they were under Stalin:

- The regime has sanctioned several articles written by KGB officials that attempt to distance the present KGB from its predecessor of the Stalin era. Chebrikov emphasized in his September 1988 interview that the security organizations themselves suffered under the repressions of the 1930s.



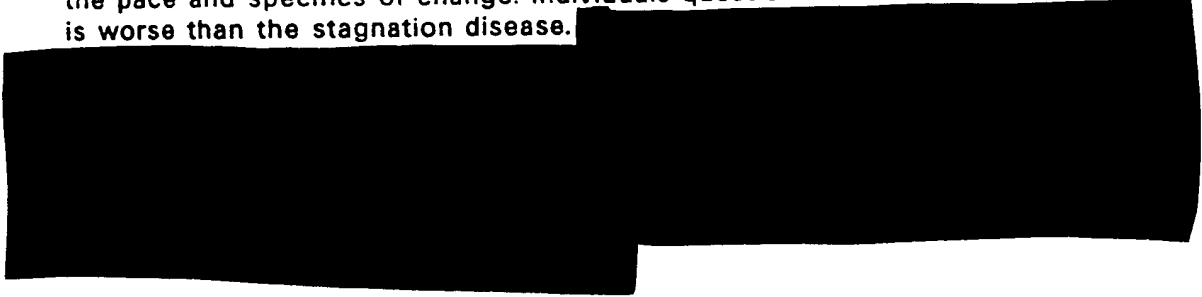
Gorbachev, however, may go beyond merely raising the police and KGB to higher standards under glasnost and move to streamline and reorganize their apparatus.



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- One recent Western press account has alleged that the KGB will even be shorn of its border guards, which would be incorporated into a new Ministry of the Armed Forces along with regular troops and some MVD units.
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Potential Hurdles

Gorbachev's battle to attain legal reform requires him to overcome two hurdles: to prevent conservatives from eviscerating the draft laws--or, worse, using the new laws to institute even more restrictive norms--and to see that a resistant bureaucracy implements the laws in a reformist spirit. As in his other reform efforts, Gorbachev is apparently meeting significant political and bureaucratic opposition to the pace and specifics of change. Individuals question whether the reformist case is worse than the stagnation disease.



Leadership Differences

Gorbachev has not had full control of the Politburo nor its complete support for all elements of his legal reform agenda. Events in the past two years indicate that some of his most far-reaching legal proposals have hit significant opposition. For example, a church official interviewed by a Western newspaper in February 1988 mentioned that a political "struggle" surrounding Gorbachev's reform had considerably delayed the draft law on freedom of conscience, though he stated later in the year that the pace had picked up. [REDACTED]

[REDACTED]

[REDACTED]

Former Politburo members [REDACTED] and Andrey Gromyko also probably opposed some aspects of Gorbachev's anticorruption campaign until their replacement in September 1988. [REDACTED]

[REDACTED]

[REDACTED] Gromyko's less than enthusiastic stand on anticorruption issues was already clear in 1986 when he warned against vilifying "honest Communists," and was again reflected in the conference resolution on legal reform prepared by a committee he chaired. Often more general than the preliminary conference theses or Gorbachev's opening day speech, the resolution and the limited treatment of legal reform by conference members were a disappointment to reform-minded observers. Most telling was the absence of Gorbachev's call for guaranteeing rights such as privacy and confidentiality of correspondence and telephone conversations in the resolution, although such a bid did appear in the resolution on political reform that was drafted by a committee headed by Gorbachev. [REDACTED]

Increasing Unrest Fuels Resistance to Legal Reform

The upsurge of demonstrations and ethnic violence appears to have increased resistance by some leaders to a continued broadening of civil rights. [REDACTED]

[REDACTED] Gorbachev apparently has had to balance his policy of encouraging public expression against warnings of Politburo members, such as Chebrikov and Ligachev, against lawlessness or anarchy. The regime passed a federal law on demonstrations in late July 1988, and has used it to narrow the limits on acceptable activity and to legitimize actions to eliminate volatile situations. [REDACTED]

The new law on demonstrations is generally restrictive. It requires citizens to request permission to hold a demonstration 10 days in advance, to inform the local party executive committee of the purpose and location of the demonstration, and to be liable for any material damage to private or public property. Regional authorities are also given the right to pass additional regulations to take into account local conditions. The Russian and Ukrainian laws, published soon afterward, both provide that violators can be fined up to 300 rubles or be jailed up to 15 days; repeat offenders can receive a fine of up to 2,000 rubles, a year of corrective labor, or up to six months in jail. [REDACTED]

In justifying the new law, officials pointed to the numerous rallies and demonstrations cropping up in the USSR that were attended by hundreds of thousands of citizens. [REDACTED]

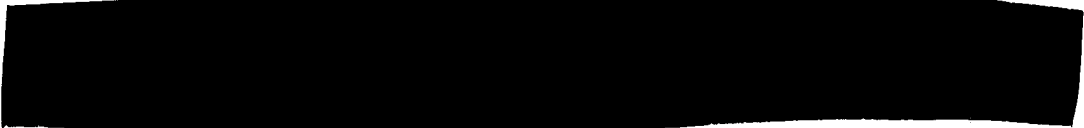
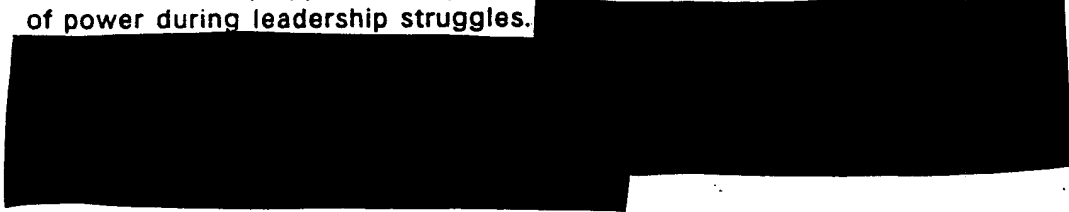
The April 1989 decree amending the law on state crimes also legitimizes regime actions aimed at quelling nationalist and ethnic unrest. While officials insisted the decree was not a reaction to the ethnic violence taking place in Georgia the weekend it was passed, it specifically targets anti-Soviet activities and ethnic violence. Citizens convicted of inciting nationalist dissension, degrading national honor, or discriminating against ethnic groups can be imprisoned for up to three years or fined up to 2,000 rubles. Punishment is stiffened to five years or 5,000 rubles if actions are combined with violence or committed by officials, and up to 10 years when the actions are committed by a group or involve the loss of life. [REDACTED]

Over time, however, strong advocates of legal reform, particularly those involved in foreign affairs, have advanced to key positions. Politburo member Alexander Yakovlev has provided the most consistent support for Gorbachev on the necessity and details of legal change. In July 1988, Yakovlev told a meeting of media officials that "society has taken a huge step forward" with the party conference's endorsement of the primacy of law "in every area of life," the development of a socialist law-governed state, and the "absolute equality of everyone before law."

[REDACTED]


The sweeping overhaul of the top party leadership made by the September CPSU Central Committee plenum and the subsequent reorganization of the party apparatus appear to have improved--for the most part--Gorbachev's chances for making further progress toward legal reform. Having retired all Brezhnev-era appointees but Ukrainian party boss Vladimir Shcherbitskiy, Gorbachev has replaced several with individuals who have strongly supported his efforts to reform criminal justice and law enforcement:

- Anatoliy Luk'yanov, a key Gorbachev ally and trained lawyer, who as CPSU secretary headed the party's day-to-day oversight of the legal system, was elevated to candidate member of the Politburo and First Deputy Chairman of the USSR Supreme Soviet. [REDACTED]
 - Former MVD head Vlasov, the most outspoken of the law enforcement leaders in favor of Gorbachev's legal agenda, was elevated to candidate member of the Politburo and Premier of the RSFSR. Although his shift to Premier will take him away from direct oversight of law enforcement, Vlasov has already publicly encouraged anticorruption and legal reform efforts in the largest and most crucial region of the USSR. His continued support would provide great impetus for overall legal reform because law in the RSFSR has historically been the model for other republics.
 - Although the circumstances of Vadim Bakatin's appointment as MVD chief--three weeks after Vlasov's reassignment--suggest a compromise, Bakatin has enthusiastically supported reform. He also demonstrated his managerial ability as first secretary of two important regions in the RSFSR. Bakatin does, however, appear to be more concerned than was Vlasov about the threat of crime and social order. These views probably made him acceptable to a broader cross section of the leadership.
- [REDACTED]

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- Even Chebrikov's transfer to the party Secretariat at the plenum--a move which in other cases has signaled an expansion of political authority--benefits Gorbachev. It removes a personal opponent from direct control over the state security apparatus, a position used in the past to tip the balance of power during leadership struggles.
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Bureaucratic Resistance

Even if there were unanimity at the top--which is not the case--significant resistance at the working level would slow the pace of legal reform, both in drafting the laws and implementing them.



Institutional and personal interests inhibiting reform have come to light:



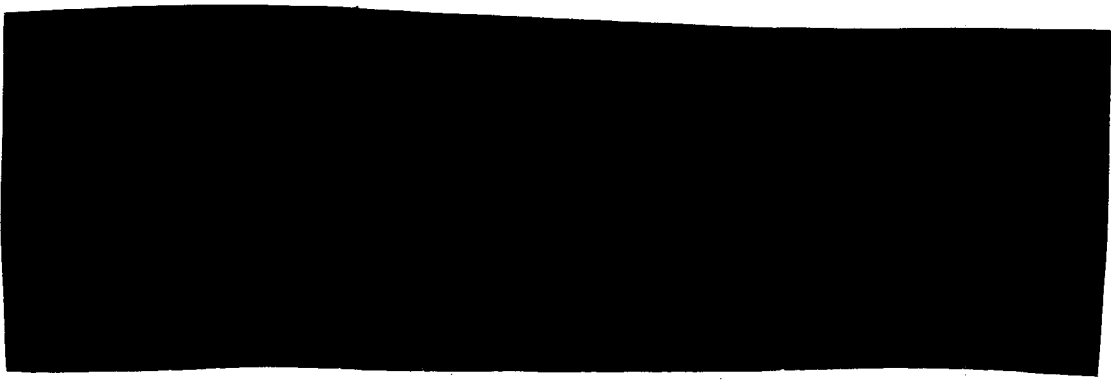
- The Ministry of Justice appears threatened by the efforts to create nationwide bar and attorney associations. While it has apparently pushed and influenced one organization for all law-trained professionals, the ministry has attempted to interfere with trial attorneys' attempts to create their own nationwide organization, according to Western press reports. A group of attorneys that called a meeting in December 1988 about 350 miles south of Moscow found that the Justice Ministry had canceled their hotel bookings and given the conference hall to another group. During a meeting this February on the association, conservative delegates proposed charter revisions that, in the view of their more reform-minded and vocal colleagues, gave the Justice Ministry too much control. [REDACTED]

Local officials have continued to resist changes that threaten social control, probably for both practical and ideological reasons. These officials are forced to balance calls to protect citizens' rights with their responsibility to maintain order:

[REDACTED]

- Officials have also expressed skepticism of the regime's emphasis on "humanizing" the criminal justice system. In early 1988, Procurator General Sukharev told Western reporters that efforts to overhaul criminal law were running into opposition from some officials, saying that "some believe that the stricter the laws are, the better." In a discussion of prison reform in a Soviet journal, one senior camp official said that he knew the work the inmates performed was difficult and sometimes monotonous and unpleasant. "But forgive me, we are running a prison, not a resort. We have not invited anybody behind our barbed wire....So all this talk about conditions is demagoguery."
- Several officials at the April 1989 Central Committee plenum complained that law enforcement was not vigorous enough. Hardliners strongly advocated retaining the April 1989 decree's provision, which made it a crime to insult officials, and warned against caving in to lawyers' attacks on the law. [REDACTED]

The institutions and individuals that lost the fight at the drafting stage will probably continue efforts to protect their interests during implementation. Similar concerns with maintaining control and law and order are already providing excuses to pull back on full implementation:



- Members of the informal group "Martyrology," dedicated to the memory of Stalin's Belorussian victims, have had several run-ins with the law because of "unauthorized" public meetings. The group members charge that they have been given administrative penalties--including fines and detention--based on fabricated evidence and forced confessions.
- A Moscow police chief noted in the Soviet press last fall that "many of our citizens take democracy to mean total license and anarchy." He noted that in the previous 18 months, six soldiers of the MVD's Internal Troops had been killed and over 1,000 injured in performing riot-control duties.
- Officials have used strong law enforcement as a means to discourage the cooperative and private enterprise movement, which they apparently oppose for ideological or other reasons. Many charge that these new businesses are the root of increases in crime, including the growth of organized crime. In May 1988, Premier Ryzhkov, speaking to the Supreme Soviet, attacked criminal prosecutors who threaten would-be business leaders with the unearned income law. [REDACTED]

Moreover, the regime faces a formidable battle in preventing local officials from becoming frustrated by the Catch-22 situation they may experience in attempting to satisfy often contradictory calls from Moscow. Many laws have not caught up with policy changes, yet the regime continues to demand improvements in performance. Thus, officials are forced to break laws and to be liable for determining whether a particular rule supports reform and therefore is necessary to uphold or counters reform and therefore is acceptable to circumvent:

- In the economic area the regime is continually telling officials to uphold the law while encouraging them to bend the rules in support of reform. The Soviet press has called for a stop to the prosecution of enterprise managers who violate the letter of the law--but not the spirit of reform. One article scathingly criticized the prosecution of a manager who illegally hired outside construction teams to do essential work that could not be completed in any other manner. Despite the laws on the books, the Supreme Court has held that a party is not guilty of abuse of office unless he is acting for mercenary or other personal interests.

- Law enforcement officials have recently criticized harshly the work of local police organs for allowing an increase in violent and other serious crime in 1988. Nevertheless, some have charged that reform policies aimed at "humanizing" criminal punishment and reducing the number of convicts held in prisons are partly to blame for increases in recidivism, since the necessary supervision and training for convicts "on the outside" is not yet in place.
- The case of several citizens in Ryazan' who were fined and imprisoned for gathering illegally outside the local city council building was the subject of several articles in the Soviet press during the March elections. The city council reportedly ignored efforts in good faith by the group to get permission for a meeting to nominate candidates for the Congress of People's Deputies. When the group tried to force an answer by congregating near the city council building, the police were called and arrests made. When asked the reasons for the government actions, the official replied that he was "simply afraid" that the meeting of voters would affect the elections. If he had not cracked down, he and others could "have been summoned and asked: why were preventative measures not taken? And I don't want to be punished." [REDACTED]

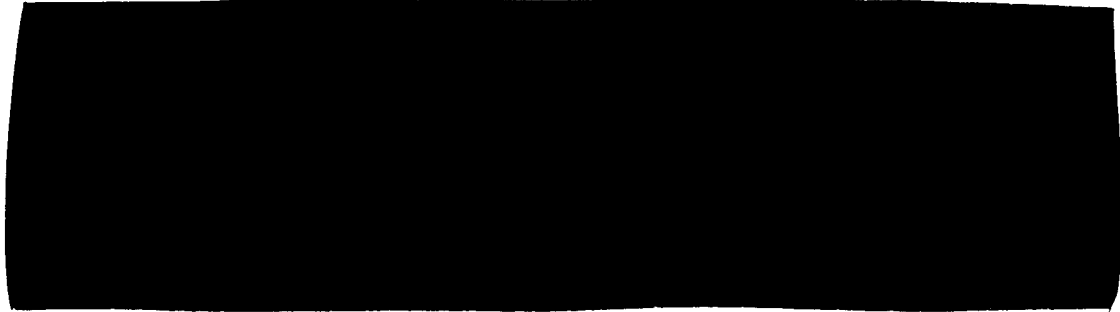
Lack of Legal Culture

Resistance to legal reform or, at least, inaction will continue as the regime struggles to transform society--bureaucrats and citizens alike--to respect and utilize law as the final word. [REDACTED]

[REDACTED] In a poll reported by Moscow News, 1,000 respondents in several Soviet cities were asked about the principle that "everything is permitted that is not prohibited by law." While 57 percent approved of it, 23 percent believed that it would open the door to anarchy and 20 percent were undecided. (C NF)

Soviet regimes, including the present one, have repeatedly held political expediency superior to law. Officials, including Gorbachev, still do not seem to understand that the integrity of law and a "state of law" are threatened by such practices:

- In a meeting with Gorbachev, Kazakhstan Council of Ministers Chairman Nazarbayev described the difficulties of expanding rural private ownership in the absence of strong legislation on the subject. Gorbachev brushed off the difficulties, according to Nazarbayev, telling him to proceed even without such legislation.



- Despite the regime's calls for the past few years to stop blindly passing burdensome regulations, ministries continue to act independently and seem indifferent to the need of careful review and widespread publication. When asked about the issue of sublegislation, ministry officials and enterprise managers failed to see that a problem existed, while their own attorneys assessed the problem as severe.
- The regime recently passed a law prohibiting cooperatives from engaging in a series of activities. In an Izvestiya roundtable on these newest restrictions, Institute of State and Law specialist Tamara Abova--credited privately with drafting the majority of the original law on cooperatives--was obviously disgruntled by the amendments and confronted a Council of Ministers official, asking whether there was "even one scientist {jurist}" involved in the working group to draft the new law. The official replied that legal specialists were consulted, but their opinions did not mesh with those of the Council of Ministers. [REDACTED]

Other specialists heavily involved in drafting reform legislation have complained that the drafting process indicates lack of respect for legal expertise:

- In April 1989 legal commentator Arkady Vaksburg went so far as to say he was glad that the laws on glasnost, the media, and informal groups had been delayed. Given the current Soviet stage of "evolution," he said, they would not be good or enforceable laws.
- Criminal law specialist Aleksandr Yakovlev told an American audience in February 1989 that he and his colleagues were fed up with submitting completed and forward-leaning draft laws and then losing all control over what happens next. He explained that ministries also submit their own, usually narrow-minded, drafts. A political tug of war eventually results in a draft that is approved by the party. But no justifications or reasons for the

choices in the official draft are issued. Yakovlev advocated that all the drafts submitted by different parties be made public and that the legislature be required to publicly defend its choice.

- Yakovlev and his associate Boris Kurashvili told a Western journalist that parts of the April 1989 decree amending the law on state crimes were unconstitutional. They claimed that, when they saw the draft proposals, they did not contain the provision that prohibited the public insult of state officials or organizations. Kurashvili characterized this article as "exceedingly infelicitous" and attributed it to haste and the incompetence of those in government who drew it up.
- In the fall of 1988 three jurists who prepared a controversial draft of the press law that was quickly rejected by authorities as too liberal took matters into their own hands to get their views known. Their efforts included giving several interviews to Soviet youth and reform journals in which they complained that the authorities had eliminated almost all their proposals in the final draft, persuading an Estonian newspaper editor to print their original draft, and contracting with an official publishing house to print copies of their draft. [REDACTED]

★ Is a State of Law Possible?

Gorbachev now stands at a critical juncture in the legal reform process--having criticized the old, he is required to build the new. [REDACTED]

* [REDACTED] At the same time, legal reform has become even more imperative. In a poll of Muscovites ranging from 18-year-olds to pensioners recently conducted by a Soviet institute, the largest share of respondents found that legal reform was the aspect of life most in need of change. Moreover, other reforms cannot be effectively implemented without a legal framework. [REDACTED]

Indicators of Progress

To be successful, Gorbachev must balance his overall push for legal reform with the need to enact enforceable law. Soviet jurists have warned the leadership against pushing through poorly written laws or laws not coordinated with other efforts, requiring amendments soon after the laws are promulgated. The regime's task is especially difficult because draft laws tend to cover overlapping issues; for example, the proposed laws on the freedom of conscience and on voluntary associations. Progress on one may be held up until the entire package is ready for approval. Milestones for the progress of new laws--which could change slightly when the full-time legislature develops its procedures--include completion of drafts, favorable review by the Supreme Soviet's legislative commission, approval by the Politburo, publication for public discussion, and promulgation. Delay in a

law does not always indicate the scope of controversy; for example, disputes over a few provisions could range from important policy debates to discussions of language technicalities. [REDACTED]

However, delays in addressing criminal law or a lack of significant changes in criminal law reform, considering the significant publicity that has surrounded it, would indicate that Gorbachev has been forced to mark time and compromise:

- Further amendment of the April 1989 decree, and in turn Article 70 of the RSFSR Criminal Code, that broadens rights of free speech and expression--for example, prohibiting only public calls for the violent overthrow of the government--would advance reform significantly.
- The regime's decision on Articles 142 and 227 of the RSFSR Criminal Code--directed at religious believers--will be key indicators of regime intentions and seriousness about religious freedom.
- Revisions to criminal procedure could range from a minimalist approach that slightly reduces the threat of due process violations in specific cases to major changes that provide full procedural protections and mechanisms for redressing violations. Indicators of progress toward legal reform will include the regime's decisions on when defendants receive a right to an attorney, whether the attorney will be the equal adversary of the prosecutor, and how the function and number of lay judges are changed. [REDACTED]

The promulgation and content of proposed civil legislation expected over the next few years will be another important barometer of the pace of reform. Passage of laws outlining new institutional change--such as those on the judiciary, the Constitutional Review Commission, and security organizations--are crucial for progress in reform and will indicate the extent to which the regime is willing to risk its control to maintain the integrity of the law:

- The more specific the law on the Constitutional Review Commission is on membership qualifications and recall, the more likely its members' independence and the greater their objectivity. Requiring legal knowledge and experience of members is important. Avoiding vague guidelines for removal, such as in Hungary where the legislature may remove Constitutional Council members who "do not properly perform their duties," is essential to its power as a real check on the legislature. The commission would also be more effective if it could review any law regardless of when it was enacted, as opposed to being restricted to law passed after the commission's creation.
- Issues given to the Constitutional Review Commission and how it decides them will also be key. [REDACTED]

- [REDACTED]
- Though not expected until 1990, the draft Law on State Security will be a key indicator of regime intentions to institute a state of law. A minimalist approach limited to enumerating existing KGB and MVD practices might reflect a step toward openness, but little more. Further-reaching proposals such as reorganizing the KGB to reduce some of its domestic security functions or creating standing committees on state security under the Supreme Soviet, with broad oversight--if passed and implemented--have greater potential for providing checks on the power of any one organization. [REDACTED]

Progress on expanding citizens' rights to information and protection against arbitrariness will depend on the passage and implementation of several other laws:

- Gorbachev will achieve significant reform if he can override opposition to the bills on glasnost, the media, archives, and freedom of conscience and push laws through the process--even if they do no more than codify the present policy. In all these laws, provisions delineating procedures and standards for review of grievances and charges of wrongdoing are important. These provisions need to be linked to improved slander and libel protections that would allow the opening up of information while protecting against its false and misleading use. [REDACTED]

- An increase in the use or amendment of the law on citizens' rights to appeal unlawful actions of officials would indicate progress. Reform-minded officials have already criticized its implementation, one charging that cases were filed against only about 300 officials as of June 1988. [REDACTED] only one of the 13 cases initiated under this law that she knew about has led to the trial and conviction of an official who persecuted a whistle-blower. The publication of cases would serve to educate the public or possibly provide incentive for other cases. Most significant would be amending the law to remove the "collegial organ" exception. Courts have used the exception against refuseniks suing OVIR on its emigration decisions. If the exception is removed by amendment, the courts--already having accepted jurisdiction under the law--will be forced to decide cases that may overturn OVIR or make obvious political decisions that violate the law and that would be subject to public scrutiny. [REDACTED]

Prospects for Achieving Goals

Even if Gorbachev makes only moderate headway in pursuing legal reform, he will probably further his goal of improving the Soviet image abroad. Because foreign observers often--though arguably incorrectly--assess a country's legal system by its criminal law, even minor changes will go far in bolstering the credibility of the entire system. Revisions such as abolishing exile and banishment, narrowing the death penalty, and decreasing prison sentences have great international appeal when portrayed as improving human rights by "humanizing" and "decriminalizing" law. Soviet officials have already contrasted their use of the death penalty to US policy, labeling the execution of juvenile convicts in some US states as a human rights abuse. [REDACTED]

However, the potential for foreign observers to overestimate change is high and the difficulty in monitoring potential abuses is thus increased. Although Soviet authorities describe "decriminalization"--moving a violation from the criminal system to the less punitive administrative system--as liberalization and a lessening of punishment--the accused has even fewer procedural due process guarantees than exist in the current criminal system. Further revision of the law on state crimes--even its abolition--could be easily circumvented if other procedural safeguards, such as early defense counsel, were ignored. The dangers are illustrated by the regimes' reported increased use during the past few months of administrative arrests, detentions, confiscations, and fines to harass and prevent activists, such as members of unofficial groups and demonstrators, from causing too much disruption. [REDACTED]

If the regime follows a middle-of-the-road course, as most sources indicate it will, Gorbachev will also probably be fairly successful achieving another important aim--reviving respect for the law. Soviet citizens support firm law enforcement and would favor efforts to improve the competency of the police and the courts, end corruption, and eliminate the worst police abuses of human rights. Recent letters from citizens commenting on the proposed criminal law fundamentals, in fact, have criticized the narrowing of the death penalty; one letter even advocated public hangings. Changes in sentencing that make punishments better fit the crime as well as movement away from imprisonment--both of which are expected--will, in criminologists' view, aid in the fight against crime and recidivism. Fairness and universal application of the law by the regime would revive citizens' respect for the law. [REDACTED]

On the other hand, the drives against corruption and incompetence may cause uneasiness among personnel in law enforcement organizations. These organizations, unused to public control, could be inhibited by new procedures and technicalities and disgruntled by the purges, and might become less effective at crime prevention. [REDACTED]

The Lenin-

grad press confirmed that the complaints of the demonstrators included low salaries, poor housing, the "social and legal defenselessness" of the police and the "insult" of "disrespectful relations toward the police." More significant, if reform results in more lawlessness--for example, in allowing nationality interests to cause widespread disruptions--the majority of the Soviet population, including officials, could feel things have gone too far. Hardliners are portraying the recent increases in crime--which legal specialists blame on the relaxation of the antialcohol campaign--as the result of democratization and the "humanizing" of criminal law.

Gorbachev's use of law to unfetter initiative and place the economy on a new footing will probably meet moderate success, yet will require significant time to develop. Legal reform is not the only requirement for successful economic reform. Gorbachev's progress in making law a tool to guarantee the irreversibility of economic and political reform will be affected by the quality of the new law and its implementation--both of which we expect to be spotty. Moreover, the regime has to convince the public that the new laws encouraging initiative will not be ignored or revoked. Arguing that the December 1988 law restricting cooperatives further undermined people's trust in the law, two Institute of State and Law lawyers wrote a letter to Moscow News that stated:

A law-governed state does not mean more laws, it means more legality Trust is so far tenuous, it is still weak, and people shouldn't be disillusioned again. No one can now guarantee that, a couple of months from now, other activities will not be recognized out of bounds for co-ops.

Although there has not been enough time for the country to develop the legal culture needed to draft a technically good law, some changes are positive--public discussion, legal education, and a Supreme Soviet that may begin to flex its muscles, as it did in protesting provisions to tax cooperatives and forcing changes to the draft Constitutional amendments. Efforts to develop information access and public legal education, important to encouraging and protecting those seeking change under the new laws, may also fall short of reformers' proposals. Concerted public legal education and professional training will be expensive and require time and long-term commitment.

Since there are so few written guarantees in this area, some core legislation must be passed for reform to progress. New laws--even if they are poorly drafted and handicapped with compromise provisions--can help the process of institutionalizing new policies. Change will probably come in steps as consensus grows. In the case of the law giving citizens the right to sue officials, for example, several sources indicated that controversy resulted in a compromise document that was unsatisfactory to reformers. Three months after the law was passed but before it was effective, amendments were passed that broadened it and gave citizens greater protections. Now justice officials have joined academics in advocating further

change and proposing a law that would never have been seriously considered last June. [REDACTED]

Prospects for building legitimacy by eliminating loopholes have the least chance of total success--but some progress is likely. The public may get an increased sense of participation in the legal process--for example, through additions to the number of lay judges and new chances to enforce rights such as the ability to sue a local official for denying a housing permit. Gorbachev has been able to clean out, on a limited scale, those who egregiously violate the law, thereby reinforcing his words that no one is above the law. He has brought the need for change to the forefront and has opened discussion more than any past Soviet leader, which is beginning to raise the public's legal consciousness and expectations for change. The fairness of the system will be substantiated by Gorbachev's broadening legitimate activity (both in economic and political arenas), better defining the boundaries of acceptable behavior, and even increasing punishment for those who cross the line. (C NF)

However, Gorbachev's anticorruption drive--though well-publicized--may be only a drop in the bucket given the widescale extent of the problem. While he has taken to task huge numbers of corrupt officials, Gorbachev is far from achieving and maintaining a "clean" party, law enforcement, and economic bureaucracy. Broad media coverage of the success of campaigns against unearned income and corruption, including the recent publicity given the Churbanov trial, may give a false impression that the remaining problem is smaller than it really is. [REDACTED]

[REDACTED] Gorbachev's effort is merely putting out fires rather than addressing underlying problems in society and the economy. [REDACTED]

The effectiveness of the legal system is more dependent on the success of broader political change than on reforms within the legal establishment. The regime is wrestling with the contradiction of trying to maintain its ultimate authority while somehow preventing government arbitrariness and protecting individual rights. The party continues to have a key voice in the appointment of personnel in the legal and law enforcement system, the ability to promulgate party decrees that in practice have the force of law, and the constitutional position of being the country's "guiding force." Until the judiciary and other legal organs are truly independent of party control and provide the final interpretation of the law, Gorbachev will not be able to create the self-adjusting, self-regulating system he apparently seeks. Until then, the legal system will be limited in its ability to provide a mechanism for instituting economic and political reform and will continue to be a tool of the political will of the leadership. Similarly, continuation of a large political police force, charged with monitoring dissent and operating in a more or less arbitrary fashion not restricted by strong legal controls, would undermine efforts to build a new foundation for party rule based less on fear and more on support from the population. [REDACTED]

While any progress should be seen as a step forward, implementation of the current legal reform strategies without further political change will fall short of achieving Gorbachev's stated goals, and far short of developing a system that

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would guarantee individual rights as provided for in Western democracies. However, while that goal would remain beyond reach for this generation, legal reform is helping to further other goals--bringing the USSR into the modern world and lowering the barriers to change. As such, it could be an important first step in the elimination of traditional arbitrariness and could begin laying the groundwork for a more fundamental liberalization of the political system in the future. [REDACTED]

APPENDIX

Legal Administration in the USSR

Law enforcement and the administration of justice is carried out by party and governmental organizations at the national, republic, and local levels.²⁸ [REDACTED]

Party Control. Legal policy is ultimately controlled by the Communist Party of the Soviet Union (CPSU). [REDACTED]

[REDACTED] The State-Legal Department appears to retain the responsibilities of its predecessor for supervising all judicial organizations and the security apparatus. In the fall of 1988, Anatolij Pavlov, former deputy chief of the Administrative Organs Department, replaced Nikolay Savinkin as chief. Savinkin was the last Brezhnev appointee among the Central Committee department heads. [REDACTED]

Judiciary. The Soviet court system has four levels--the USSR Supreme Court, 15 supreme courts of the union republics, the courts of the provinces, and, at the lowest level, the people's court. Military tribunals, arbitration organizations, and administrative agencies supplement civil courts in their administration of justice. The people's court is the general trial court, while the higher courts provide appellate review and, in specific types of cases, act as the trial court. Usually one appeal is available to both parties of a case. The Soviet judiciary has limited interpretive functions compared to US courts. Soviet courts, including the USSR Supreme Court, do not have the power to interpret the legality or constitutionality of legislation, and their decisions are not recognized as binding precedent for subsequent cases (Soviet law rejects the principle of stare decisis). [REDACTED] ★

The USSR Supreme Court hears protests against decisions of lower ranking courts, settles jurisdictional disputes between courts of different republics, and issues instructions to lower courts concerning the application of laws. It can also act in smaller panels--the Civil, Criminal, and Military Chambers--to hear appeals and hold trials of cases of special importance (past examples include the trials of Lavrentiy Beriia in 1953, Francis Gary Powers in 1960, and Mathias Rust in 1987). The USSR Supreme Court is responsible to the legislature and its decisions may be reviewed and overturned by the legislature's Presidium. [REDACTED]

²⁸ For more detail on the structure of the Soviet legal system and key individuals within it, see DI Research Paper LDA 88-15317 (Secret NF NC), October 1988, The Soviet Legal System and Its Key Players: Facing the Challenges of Reform. [REDACTED]

Procuracy. The procuracy has the broadest responsibility in the legal apparatus. It is charged with overseeing nearly every legal, executive, and administrative procedure in the USSR. Its authority over investigative procedure, police conduct, and the observance of law in most government agencies and institutions suggests a mandate that combines the functions of all forms of US-style prosecutors and states attorneys in one central body. The procurator also supervises trial procedures, a function that is ostensibly incompatible with its functions of charging and prosecuting criminal defendants. The courts are accountable to the procurator, who has the power to discipline and remove judicial personnel. However, the procurator does not have the power to command or countermand the court with respect to a pending trial. [REDACTED]

The procuracy is headed by the USSR Procurator General--currently Aleksandr Sukharev--who serves a seven-year renewable term, and at lower levels by procurators who serve five-year terms. Sukharev was Minister of Justice in the RSFSR from 1984 to May 1988, when he assumed his current post, replacing Aleksandr Rekunkov--a hardline conservative. Sukharev has publicly supported a number of reform issues. [REDACTED]

[REDACTED] Con-
tinuing to serve as head of the Association of Soviet Jurists, Sukharev has maintained a strong international profile and has taken several opportunities to address human rights and criminal law issues, including advocating the elimination of the death penalty. [REDACTED]

Ministry of Justice. The principal duty of the USSR Ministry of Justice and its subordinate network of republic ministries and provincial departments is "judicial organization"--preparing proposals on court organization and judicial elections, overseeing both the training of judicial personnel and mass legal education, and controlling various legal services to the community such as the bar, legal departments in enterprises and other institutions, and notaries. The Ministry also has the job of systematizing legislation and preparing for further codification--a major focus of reform efforts. The Minister of Justice, Boris Kravtsov, was appointed in 1984 [REDACTED]

[REDACTED] He has publicly expressed support for Gorbachev's plans to restructure the legal system and has called for further glasnost, increased efforts against corruption, and general reform. [REDACTED]

Ministry of Internal Affairs (MVD). In addition to carrying out usual police and criminal investigation functions, the MVD is in charge of specially trained security troops that have been active in restoring order during incidents of ethnic unrest and large-scale public demonstration over the past few years. It also runs prisons and corrective labor camps and performs other duties

such as fire protection and traffic control. Siberian party official Vadim Bakatin was appointed MVD chief in October 1988, several weeks after his predecessor, Aleksandr Vlasov, was made RSFSR Premier. The delay in naming a new chief suggests Bakatin was a compromise candidate. Although he supported Gorbachev at the June 1988 party conference by endorsing reform proposals, he has appeared more cautious on law and order issues and may have ties to conservative Politburo member Ligachev, forged when both were in Siberia.²⁹ [REDACTED]

Committee for State Security (KGB). The KGB thinks of itself as the "sword and shield" of the Communist Party.³⁰ [REDACTED]

[REDACTED] Its components include chief directorates for foreign intelligence, internal security and counterintelligence, military counterintelligence, communications security, protection of government facilities, and communications intercept. Other directorates include transportation security, dissident and ideological subversion, protection of the economy, surveillance, and leadership protection. In October 1988, Vladimir Kryuchkov replaced Viktor Chebrikov as chairman of the KGB. Chebrikov, chairman since 1984, continues his policymaking role as full Politburo member and chairman of the newly created Central Committee Legal Commission. [REDACTED]

²⁹ See DI Research Paper SOV 88-100056DX (Secret NF NC OC), August 1988, The Internal Troops of the MVD: Moscow's Muscle for Internal Security. [REDACTED]

³⁰ See DI Intelligence Assessment SOV 88-10045X (S NF NC OC), June 1988, Gorbachev's Growing Confrontation With the KGB: A Coming Showdown? An intelligence assessment on restructuring the state security organs is in preparation. [REDACTED]